The University of Chicago

THE PASSING OF THE COUNTY JAIL

A DISSERTATION

SUBMITTED TO THE FACULTY
OF THE GRADUATE SCHOOL OF ARTS AND LITERATURE
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF SOCIOLOGY

BY

STUART ALFRED QUEEN

The Collegiate Press
GEORGE BANTA PUBLISHING COMPANY
MENASHA, WISCONSIN
1920

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PREFACE

When the California State Board of Charities and Corrections was established by the Legislature of 1903, the interest of prison reformers was centered in the penitentiaries. This was true not only of California but of the entire United States. From the days of John Howard and the rise of penitentiaries, debates between advocates of the Auburn and the Pennsylvania systems quite obscured the evils of the county jail. Yet here and there were found people interested in petty offenders, and in 1869 Rhode Island established a State Workhouse which "was to save men and women from imprisonment in jails and prisons, which has proved expensive and worse than useless to all concerned." But for most people the state prison with imposing buildings, large inmate population and sometimes sensational evils, appeared to be more worthy of study and philanthropic effort.

When public attention turned to the needs of misdemeanants, it was restricted for the most part to the problem of sanitary jails. The first ten years of the California State Board of Charities and Corrections was a period typified by the building of "Paully" jails. The first biennial report read: "We are now at the commencement of an era of jail building in this State. We are passing into the second stage of our history. . . . Before the end of the decade most, if not all, of our old jails will give way to modern structures." As a matter of fact, of the fifty-eight counties in California, sixteen did erect new jails, and five more remodelled their old structures.

But even in 1904 the Board conceived the need of more fundamental changes, and on the same page with the statement of the jail-building program it said: "We believe the time is not far distant when all persons convicted of violation of State laws will be considered and treated as State prisoners and confined at labor in State institutions." Following discussions along this line in the National Conference of Charities and Corrections and in the American Prison Association, a bill was introduced into the 1911 Legislature to establish two state farms for misdemeanants. Being a first effort and lacking public support, it failed.

When I became Secretary of the State Board of Charities and Corrections in December 1913, I felt that the great need, so far as "corrections" were concerned, was for a fund of information to back the penal farm movement. So I personally visited the county jails as soon as possible, accumulating information as to just how the army of petty offenders was faring in California. The meeting of the National Conference in the spring of 1914, a visit to the Kansas City Municipal Farm and discussions in the Commonwealth Club of San Francisco were very helpful in formulating the problem through the suggestions and criticisms offered. In the 1914 report of the Board I presented a tabular statement of county jail conditions with comments and arguments. With this as ammunition, the passage of another "state farm bill" was urged in the Legislature of 1915. Again inadequate publicity and inexperienced lobbying ended in failure.

Looking ahead to 1917, I then made another study including an examination of the county jail records, covering personal data concerning 31,000 prisoners who were received during 1914. I did most of this work myself, but was greatly assisted by Ernest P. Von Allmen, agent of the Board, in field work, and by Dr. Jessica B. Peixotto, Dr. Martin A. Meyer, and Rev. Chas. A. Ramm, members of the Board, in revising the data for publication. The results of this investigation were published as a bulletin entitled "A Study in County Jails in California." This pamphlet, semi-popular and semi-scientific, was then used as propaganda for reform of the system of handling petty offenders by (1) commitment to state institutions, and (2) indeterminate sentence.

By the opening of the 1917 Legislature I had been led to two new opinions: first, that the Legislature could not at that time be induced to establish the desired state institutions for misdemeanants, and second, that our program was inadequate because it made too little provision for individualization. As a result of the first, I drafted and secured the passage of two bills extending the possibility of outdoor work for men serving sentence in county or city jails. (These the Governor pocket-vetoed.) As a result of the second opinion, I entered upon further study which has developed into this little book.

In preparing this later work for publication I have been again fortunate in having most valuable counsel. Dr. Edward Byron Reuter, my colleague in the Goucher College, has read the manuscript

and offered many helpful suggestions. Dean Albion W. Small and Dr. Ernest W. Burgess of the University of Chicago have also done me the honor to study the work as a whole. Cues to a "basis of individualization" came from Professor George Herbert Mead of the University of Chicago and from Calvin Derrick of the New Jersey Department of Charities and Corrections. Both have been kind enough to examine critically the fifth chapter.

In spite of the recognized weakness of the "Study in County Jails in California," I am again undertaking to present a problem of social science in language that the uninitiated can understand. It is admittedly a difficult task, but I hope greater success will attend this effort to steer between the Scylla of academic obscurity and the Charybdis of newspaper shallowness and sensation.

S. A. Q.

Goucher College, Baltimore,
September, 1919.

INTRODUCTION

Crime in primitive society appears to have been the violation of custom or taboo, the normal consequence of which is death or exclusion from the tribe. Taboo is simply the reverse of custom, which has been aptly described by W. I. Thomas. "When for any reason there is established in a group a tendency toward a practise, then the tendency is likely to become established as a habit, and regarded as right, binding and inevitable: it is moral and its contrary is immoral." Such habits and customs gain sacredness with age, especially when they concern the whole group. Thus importance attaches to customs which have to do with procuring and distributing the food supply, birth of children, initiation of youth, marriage, death and war. In all these things the life of the whole group is involved. Any irregularity on the part of an individual is met by the full force of the entire group. It is condemned as wrong and is visited with severe penalties.

Thus primitive crime seems not to be personal injury so much as a danger to the group. The danger which is feared is associated with the new, the strange, the unusual or the mysterious. With advancing culture it gathers around the unseen, spirits or deities. A little higher in the scale of civilization it emerges clearly as the wrath of an angry god that is feared.

Punishment, then, must be closely related to ceremonial and magic, primitive man's devices for overcoming taboo. For him it is necessary to remove the taboo, to offset the evil which may accrue from a broken custom. With the evolution of spirits and deities the situation becomes a little clearer to us moderns. A spirit might harm the group unless in some way gratified or distracted. A god might be angry and have to be appeased. Violation of custom then, becomes a disturbance of spirits or the arousing of divine wrath. Reparation must be made by some ceremonial. This might have been through the scapegoat, through sacrifice, through expulsion or execution of the offending member.

While the origins of crime and punishment are still more or less obscure, we seem justified in repudiating the popular theory that they

first appeared as personal injury and vengeance. The offender stands from the beginning in the rôle of an enemy or at least a source of danger to the group.

Now if that be true, it is easier to understand our modern "retributive justice." If the action of the court were merely the settling of a personal dispute, the regulation of personal wrath and the substitution of official for individual vengeance, how could we explain the "righteous indignation" and "moral enthusiasm" which gather around a criminal and his punishment? It is just because it is a group affair that so great importance is attached to catching and punishing the offender. In its extreme form we have the mob and lynch law. Only a little removed from this is the sheriff's posse and the man-hunt. Not only are the chase and the prosecution a game; they are a game in which we are identified with our group, with organized society. It is the heightened feeling, the letting ourselves go, which also appears in war. We may go the limit, because the object of our fury is an enemy of the group. We are thrilled by the sense of unrestricted activity. We enjoy going after the criminal.

So long as we are under a regime of retributive justice, punishments are severe. Death, torture, banishment are the common forms. But when some use is found for the offender, these rigors may be abated. Instead of death or exile, he may be enslaved. The property relation makes it possible to retain him as a partial member of the group. He is in a sense an enemy, but he is also property. Hence he is not destroyed, but neither is he allowed to share the privileges of the common group life.

There are various ways in which further mitigation may have occurred. But it seems likely to have involved something like this: some members of the group saw in the offender more than an enemy and more than a piece of property. Perhaps it was the delinquency and punishment of a kinsman or friend that occasioned this situation. Perhaps it was a personal experience such as John Howard's. But whatever the way in which the additional sides of the criminal's life came to attention, it has created a problem. The person who is aware of the offender as a brother as well as a violator of law must struggle with two conflicting impulses. Shall he deal with the delinquent as an enemy of society, or shall he condone his offense because of kinship? Perhaps it is in some such problem situation as this that the reformer has emerged.

As an effort to solve such problems of social conduct punishment has actually been mitigated. Death has given way to banishment and slavery, and these in turn to wer-geld and imprisonment. But most people do not realize how very recent all this change has been. Imprisonment itself, as a mititgation of severer penalties, belongs to the modern world. Until the nineteenth century dozens of slight offenses were punished by death. "Prison reform" then, is largely an affair of the last hundred years.

Now the rôle of the reformer is a difficult one, for the exhilaration of the man-hunt is gone. Action cannot proceed until a problem is solved. The conventional member of the group enjoys the excitement of unimpeded action along with his fellows. But the reformer must stop and make a deliberate choice.

There is one sort of reformer, however, who solves his difficulty once for all by establishing in imagination, if not overtly, a new group. This new group includes the criminal and sets itself against the established order. It takes the relatively fixed position that offenders are the victims of society, that they are abused. The sentimental humanitarian rushes to the defense of the criminal with all the enthusiasm displayed by the conventional man in pursuing the criminal. It is because a new group has been set up over against the old.

The clash between the "dignity of the law" and "sentimental humanitarianism" may be stated in terms of severity versus leniency. The humanitarian accuses the legalist of inhuman brutality. The representative of the established order charges the humanitarian with "coddling" criminals.

So long as the conflict is on this plane—severity versus leniency—there seems to be little hope of a settlement. In these terms the problem appears insoluble, because it is group against group. But there is another sort of reformer who sees in the offender one who is a danger to the group, but who is for all that a member of the group. He seeks neither to destroy nor to condone the delinquent. His desire is to understand him and the reasons for his crime so that the offender may be restored to normal relations with his fellows.

This is the point of view of the present study. It is not an easy position for most people to take, because it means holding up the act and weighing circumstances. It requires inhibition and postponement of action until a judgment can be formed. But the con-

ventional thing, the easy thing, is to respond quickly to the presence of a criminal. The careful student of the offender (distinguished from the man on the street as well as from the sentimental humanitarian) misses the thrill that goes with united group action which is spontaneous and unhindered. It is much harder to make a social diagnosis than to hound a man to prison or to shoot the robber hiding in a swamp.

How can the enthusiasm of the sheriff's posse or of the sentimental reformer be carried over to the diagnostician and the correctional officer? It is like the problem of transferring interest and attention from the buffalo hunt to the domestication of the buffalo, from the play of childhood to the serious work of mature years, from conversion through a revival meeting to religious education through a Sunday-School, from homiletics and dogmatism to scientific investigation, from fighting fire to erecting fire-proof buildings, from stock-gambling to cost accounting.

The fact that such transfers of interest do occur is clear to all. How they occur it is difficult to say. But the change seems to involve a new definition of purpose. The economic analogy may help us to appreciate this. So long as his main interest is in driving competitors from the field, a business man thinks of his firm primarily in terms of its rivals. But when a monopoly has been secured or in some other way competition has been modified, the corporation may acquire a new meaning. No longer can it be defined in opposition to rivals. It must be stated in terms of its processes, its functions. The quality and quantity of output, the treatment of employes, may now receive attention.

The prevention and salvage of waste may not at first stir men as does cut-throat competition. But after business gets going and settles down, attention turns more and more to the maximum use of labor and material, and presently we have devotees of "efficiency." So it is possible that retributive justice may go the way of cut-throat competition, and that enthusiasm may be aroused for the prevention and salvage of human waste. The pages which follow are based on a faith in this possibility.

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CHAPTER I

The County Jail System

It is interesting to see how deeply impressed we all have been with the imposing structures of state prisons, the large number of prisoners there assembled, and the sensational acts of which they have been convicted. Even today we give only fleeting and scornful attention to county jails and petty offenders. But the fact that there are probably one hundred local jails to each penitentiary, and twenty arrests for misdemeanors to each arrest for felony[1] might well cause us to transfer the emphasis.

Most of us feel that we know pretty well what the state does to burglars, murderers and bigamists. But not many of us can picture clearly what happens to "hoboes," "drunks," and chicken thieves. Yet if we only knew it, there are choicer bits of scandal in the county jail system than in all the penitentiaries in the world.

The most general methods of dealing with the miscellaneous lot of people whom we call misdemeanants may be subsumed under the term "the county jail system." The situation as regards municipal police and lock-ups does not differ fundamentally from that involved in the sheriff's office and the county jail. Consequently, as a matter of convenience and brevity, let the one phrase stand for both.

A complete survey would include police methods—especially in arrests—detention, trial and treatment after conviction. For the purposes of this study it seems wise to deal rather superficially with all except the last. We are here concerned primarily with what is done to the people who are more or less regularly pronounced guilty of misdemeanors.

To make a simple, and possibly dogmatic statement, what happens in the process of becoming officially a misdemeanant is about as follows. A constable, deputy sheriff or policemen sees a man whom he "sizes up" as a "bum," "booze-fighter," or a "suspicious character"; and after a few questions tells him to "move on" or "runs him in." Or perhaps complaints of chicken thieves have led to the issue of

[1] *A Study in County Jails in California.* Sacramento, 1916, p. 25, 92.

a warrant and someone is arrested on a charge of petit larceny. Or, again, a boy delivering newspapers may be "taken up" for riding on the sidewalk. A farmer may have hitched his team to a forbidden telephone pole, or a shopper may have parked her car on the wrong side of the street. In these last cases the owner of the vehicle will probably receive instructions to appear in court "tomorrow morning at ten," but will not be locked up.

Now what happens to the person who is "put behind the bars?" He is led by an officer or hauled in a patrol wagon to a jail. Here the desk sergeant or deputy sheriff makes a record of the prisoner's sex, age, race, the charge against him and a few other items. He "searches" the prisoner, takes away any money, knives, keys, etc., that he may find. Perhaps he will throw them into a drawer, possibly he will seal them in a manila envelope, and it is remotely possible that he may give the prisoner a receipt.

Then the iron door swings open and the "guest" is shown to his quarters. Most commonly these consist of a steel cage inside a room with carefully barred windows. Around the cage runs a corridor for the jailer. When they are inside the big room, the jailer unlocks a steel box which encases the levers and locking devices which control both the cage and the separate cell doors. The proper levers are pulled, the grated door opens, and the prisoner is told to "get in there." Inside the cage he may be assigned to a given cell by the officer, or he may be left to the tender mercies of a "trusty." Perhaps he may be compelled to take a bath, possibly he will be sprayed with some disinfectant to kill the vermin. If lucky, he will get a pair of blankets and a straw tick that have not been used very long since their last washing.

He may go to court next morning or he may await trial for a month. If he is a "suspicious character," he may be held for as much as sixty days on a vagrancy charge; but the more usual procedure is to find him guilty of a misdemeanor, to serve sentence while evidence is sought which might convict him of a felony. While awaiting trial he will probably mingle freely with other men in the cage, some of them also awaiting the pleasure of the court, others "doing time," and possibly one or two held for lunacy hearings. He will join in poker or "crap" games, he will share in the "kangaroo court" if there be one, he will do his part of the cleaning each day.

When he goes to court he may have a lawyer, but this is very frequently dispensed with. Indeed the whole trial may not take more than five or ten minutes. What happens to him depends a good deal upon the habits of the judge. "His honor" may be accustomed to "floating undesirables," in which event the prisoner may be simply told to "get out of town"; or he may be found guilty and either given a suspended sentence or put on "probation," the condition being that he "leave town within two hours." If the judge has the "ten day" habit, the prisoner will receive a sentence of several days in jail, ground out as by a phonograph. Or mayhap it will be a fine of $25.00 which means 25 days in jail for the moneyless victim. But if the judge is worried about the bolsheviki or has had a bad night's sleep, the offender may expect to "get" anywhere from 60 days to 6 months.

Suppose he gets a jail sentence. He will then return to his cage to spent the time as before, gambling, "spinning yarns," planning future crimes, learning I.W.W. doctrines. He is supposed to be undergoing a process of moral regeneration! At the expiration of his sentence the door is unlocked, he is given his "property"—or a part of it—and he is turned out on the street. He has no money, no job, no friends, his muscles are soft from idleness, his skin is sallow, and his lungs are filled with stale prison air, but he is supposed to be reformed.

Perhaps this is a caricature, but even worse facts have been observed by the writer himself as an official jail inspector. In any case, this general statement may well serve as an introduction to a more detailed examination of the county jail system. The most of the data which follow were collected by the writer during the years 1913–1917, while he was Secretary of the California State Board of Charities and Corrections. Some of them have previously been published in reports and bulletins of the board.[2]

One of the first things discovered in the study of the county jails in California was a marked *variation in arrests* from county to county. Apparently some officers were much more zealous than others in making arrests. Taking the state as a whole, there were imprisoned in city and county jails during the fiscal year 1914–1915, 712 persons

[2] California State Board of Charities and Corrections. Reports, 1904 to date. Reports for 1914 and 1916 prepared by the present writer. *A Study in County Jails in California, Bulletin*, 1916, also prepared by the writer, and based on investigations which he personally conducted.

for every 10,000 of the entire population. But in 19 counties there were less than 100 prisoners per 10,000 of the population, while in 7 counties the ratio exceeded 1,000 per 10,000. In Yuba County it went above 2,000. Surely there was not so great a difference in the "criminality" of the several counties. Neither can we account for the variation in terms of main lines of travel. The following pairs of adjoining and similarly located counties make this clear, especially if reference is made to a map of California.

VARIATION IN RELATIVE NUMBER OF PRISONERS IN ADJOINING CALIFORNIA COUNTIES

(Ratio of prisoners per 10,000 population)

Tulare	141	Merced	580
Kings	964	Madera	1464
Santa Barbara	665	San Diego	999
Ventura	1068	Imperial	1736

The next table shows similar proportions of prisoners in counties dissimilarly located with reference to main routes of travel.

SIMILARITY OF RELATIVE NUMBER OF PRISONERS IN DISSIMILARLY LOCATED CALIFORNIA COUNTIES

(Ratio of prisoners per 10,000 of population)

Counties on main lines		Counties not on main lines	
Placer	234	Humboldt	243
Kern	558	Lassen	520
Alameda	319	Sonoma	361

Fundamentally these tables show tremendous variations in the policies of peace officers with reference to two groups of men: itinerant laborers and professional tramps. In some counties the ruling idea seems to be to lock up every unknown or doubtful character, while in others leniency is the rule.

Not only does the proportion of arrests vary; the percentages of *convictions* likewise shows a wide range. Comparing counties where there is also a city jail at the county seat, we find 78% of convictions among men booked on misdemeanor charges at the county jail in Sacramento, but only 43% of convictions in Santa Clara County (San José). Comparing counties where the county jail also does duty for the city, we find 85% of convictions in Placer (Auburn), but only 5% in Stanislaus (Modesto). Similar variations are shown by

Everson in his review of the annual report of the magistrates' courts of New York City for 1916.[3]

NEW YORK CITY COURTS, 1916

Proportion of Cases Discharged by Different Magistrates

Offense	Maximum percentage discharged by any one magistrate	Minimum percentage discharged by any one magistrate
All summary cases	28.	7.
Intoxication	79.	0.2
Peddling without license	79.	0.
Speeding	14.6	1.3
Proportion of Cases Given Suspended Sentence by Different Magistrates		
Speeding	60.	0.0
All cases	59.2	0.6
Corporation ordinances	60.8	0.2
Disorderly conduct	50.4	2.4
Intoxication	83.2	0.7
Rowdyism	75.	0.
Vagrancy	50.	0.
Peddling without license	90.	0.

Lest the above tables be misunderstood, it should be made clear that several different judges are considered in each column. What it means may be illustrated thus: Judge A discharged 28% of all summary cases coming before him; while Judge B discharged only 7%. Judge C was not so lenient in general, but discharged 79% of his intoxication cases; while Judge D discharged only 0.2% of the "drunks."

To supplement this rather abstract statement by names mentioned in Everson's review—in the vagrancy cases Judge Brough sent 80% to the workhouse, put 10% on probation, and sent 10% to the City Home. Judge Conway suspended sentence for 50%, fined 8.3%, sent 16.7% to the workhouse and 25% to the City Home or penitentiary.

The judges sit in rotation in the various courts so that each one handles cases in a majority of the district courts during each year. It is reasonable to suppose that on the whole the cases tried by any judge are similar to those of his colleagues. The great variety of dispositions which appears indicates that what happens to an offender depends less on his own deeds and needs than on the temperament of

[3] Everson, George: "A Year in the City Magistrates' Court of New York." Delinquent. March, 1918, pp. 14-20.

the magistrate. This notion is further supported by the fact that in these courts the magistrates each sit alone.

Upon the men who are actually committed to jail a great *variety of sentences* is imposed. In California in 1914, county jail sentences ranged from 2 hours to 2 years. For a single offense—vagrancy—they varied from one day to six months. Less striking but more significant are the differences in typical sentences. The lowest average sentence, 15 days, was found in Marin County; the highest average, 123 days, in Colusa. Less extreme variations are San Luis Obispo 18 days; Sacramento 80 days. For disturbing the peace the average sentence varied from 12 days in Marin to 104 days in Madera. In Orange County the "drunks" got an average of 7 days in jail, while the same offenders in Santa Clara got 59 days. For petit larceny the averages ran from 41 days in Fresno to 120 days in Orange and 122 days in Santa Clara. Vagrants were sentenced on the average for 12 days in Riverside and 90 days in Sacramento.

The modal sentence likewise displays great variation. In 10 counties it was 10 days. In 18 counties it was 30 days. The lowest mode was 5 days (Sonoma and Marin) and the highest 150 days (Glenn and Modoc). Let us illustrate this in another way. Of the men sentenced for disturbing the peace in Marin County, 43% went to jail for 5 days and 82% for 10 days or less. In San Bernardino, on the other hand, 44% got 30 days and 38% got more than 30 days, thus reversing the proportion in Marin. Sixty-three per cent of the sentences for vagrancy in Fresno were for 10 days or less, and 33% were for exactly 10 days; while in Sacramento 60% were for 60 days or over. Facts such as these just presented lead us to suspect that the treatment of misdemeanants is determined by the disposition of the judge, his theory of punishment, or the capacity of the jail, but not by a settled policy based on knowledge of the real needs of these men.

Although practice varies from one county to another, nevertheless a high percentage of convicted misdemeanants serve very *short sentences*. Roughly speaking, one fourth of them serve ten days or less and two-thirds serve 30 days or less. Remembering that many have firmly fixed habits of idleness, or at best of intermittent work, excessive use of liquor or drugs, or other vices, the significance of these short sentences must impress itself upon us. Such habits are not broken in 10 days nor in 30; much less are they replaced by industry and sobriety.

In the third chapter it will be pointed out that as a general proposition, California misdemeanants are residents of the state, but of no particular county. This fact is tacitly and sometimes avowedly admitted by courts and peace officers in their wide-spread use of the "*floater*" *custom*. Considerably over one-half of the men booked on misdemeanor charges in 1914 were not convicted at all. For the offense of vagrancy only 30% received jail sentences, and in four San Joaquin Valley counties only 5% of the men charged with vagrancy were convicted at all. In round numbers these counties "floated" 2,200 out of 2,300 men. They were taken to court and dismissed on condition of leaving town in a few hours, or put on probation or given a suspended sentence on the same condition. The reasons seemed to be that the jails were full, the men were known to be non-residents, and the cry of the tax-payers for economy was answered by officials who were forced to be penny-wise and pound-foolish. Sometimes a vagrant was "paroled." This, of course, was a joke, because he immediately moved on to some other community and was lost sight of. We were informed by officers that in some cases the prisoner was never taken to court at all, but was shown the open door and told to "get out." Occasionally individuals and gangs were turned away without being arrested. This practice we have witnessed ourselves. The writer was in Marysville, California, one day in 1915 when a large number of men—perhaps 200—were driven out by the officers. The test of whether a man should be compelled to move on or not was the possession of a meal ticket or a receipt for room rent.

We frequently found such notations as the following in jail registers: "ordered to disappear," "floated," "ordered to leave town in half an hour," "ordered to leave town in two hours." It seems apparent that no county is willing to assume the burden of caring for all petty offenders, real or alleged, who happen inside its borders. Probably no county ought to undertake this task, but somebody should and logically that body is the state. Local authorities are coming to recognize that the problem is beyond them. In the fall of 1915 representatives of several Southern California counties met to consider a plan of coöperation in dealing with vagrants. They talked of joint support of certain officers and of detention camps at points of entry into their territory. So far as we know, the plan was never put into effect, and anyway its main value is that it constitutes an

admission of the failure of present methods of handling misdemeanants in general and vagrants in particular.

Another aspect of the county jail system is the *physical condition of the jails* themselves. Again let us take California as a representative state. There are some very good jails, as jails go. Sacramento, Yolo, Humboldt, San Diego and Alameda counties have institutions that are almost invariably found to be clean, light, well ventilated, with the prisoners segregated to a considerable degree. But there are still so many jails of a very different sort that a description of one or two is in order.

Imperial County Jail consists of one room with a single cage of four cells, each about 7′x9′x7′. There are four bunks in each cell, thus accomodating in a very crowded manner 16 prisoners. However, we have counted 30 men in this cell room, and are informed by the sheriff that it has held as many as 44 at one time. There is one toilet in the corner. This was stopped up at the time of one inspection and sewage was running out over the floor. There is one bathtub usually in fair condition. Blankets are furnished and most of the prisoners sleep on the floor or on top of the cage. During part of the year a few men work outside on the public roads.

San Joaquin County Jail was built 25 years ago to accomodate 80 prisoners. It is fireproof but not sanitary. About half of the second floor is reserved for the jailer and his family, an arrangement which makes it necessary to keep a considerable number of prisoners down in the basement which is very dark and damp. The cells are all "outside rooms," but the windows are narrow slits completely covered with armor-plate steel through which are bored round holes about an inch in diameter. The light is so poor that it is practically impossible to read even in the middle of the day. The vermin, instead of being kept out by examination of incoming prisoners, are sprayed with anti-germine, the odor of which pervades the entire jail. The law regarding segregation is not complied with. Witnesses, men awaiting trial and those serving sentence are sometimes kept together in the basement cells where there is not a particle of furniture, not even the conventional wall-bunks. They sit and sleep on the cement floors over which are spread dirty mattresses and blankets.

Contrasting with the insanitary conditions of Imperial and San Joaquin, but representing an enormous waste of public funds, is Kern County Jail. In 1914 Kern County (with a population of 40,000

and an average of 40 prisoners) erected a magnificent jail, more beautiful and more expensive than the public library or high school, surpassing every public building in the county except the court house. Every modern convenience, except private rooms is provided for the prisoners. The sheriff has a delightful apartment and there are suites of rooms for his deputies. Tall columns and marble lions guarding the entrance impress the visitor with the dignity of the law. One hundred and seventy-five thousand dollars was the cost of this elegant structure, a permanent memorial to the supervisors, sheriff and architect, all of whose names are engraved on the cornerstone.

These descriptions show opposite extremes, but taking the state as a whole, three years ago, half of the county jails were dark and poorly ventilated, a third had inadequate bathing facilities, a third were overcrowded at some time during the year, and five-sixths were violating the state law as to segregation which requires: four separate departments for (1) men awaiting trial, (2) men serving sentence, (3) witnesses, etc., (4) women. The conditions in 1916 were thus summarized in the Biennial Report of that year.

Bad Conditions in California County Jails, 1916

Not safe from escape	8
Segregation lacking	29
Crowded	8
Dark	32
Stove heat or none	24
Bad air	18
Toilets dirty or out of repair	18
Baths unsatisfactory	11
Dirty throughout	12
No towels	20
Lack of employment	43
Careless handling of prisoners' property	25
Kangaroo Court	5
No night jailer	16
Insane kept in jail	23
Food supplied on contract	56
"Floater" excessively used	7
Beds unsatisfactory	20

The categories used in the above table are admittedly crude and lacking in objectivity, but still they indicate pretty clearly that there is a serious problem centering around the physical conditions of the jails. These difficulties might conceivably all be met by local authori-

ties, but the expense necessary to overhaul the unsatisfactory county jails would suffice to equip several really worth while state institutions. The latter might prove to be a good investment; the former promises at most only poor returns.

Bad as the physical conditions in county jails may be, they are less of a problem than that aspect of the situation which might be referred to as *prison discipline.* One key to the difficulty lies in the fact of enforced idleness. This is perhaps the worst single feature of present methods of handling misdemeanants. The great majority of convicted men are simply locked up in cages like wild animals. They may twiddle their thumbs, they may exchange stories of criminal experience, they may gloat over perverted justice, they may brood over wrongs done them by society, or they may sit in pious penitence! In 1916, only 15 out of 58 county jails provided anything like regular work, and in most of these only a fraction of the convicted men were employed. It seems strange that anyone should expect such enforced idleness to reform a wayward man or woman. People in jail, like other human beings, have impulses which must find some means of expression. If circumstances repress the normal outlet, some perverted expression of a perfectly natural impulse is apt to come forth. Hence the tendency of jail life can hardly be otherwise than to fix and multiply bad habits, to exaggerate inherited weaknesses. It is a trite saying that bad habits are broken only by putting good ones in their places. Yet we presume to cure the delinquent by repression instead of directing his energies actively into socially useful channels.

The employment of county jail prisoners is already provided for by law in California,[4] yet this is rarely taken advantage of. San Bernardino, Imperial, Los Angeles, Orange, San Joaquin, Solano and a few other counties have been in the habit of employing part of their prisoners outside the jails. In some counties there is no means of providing work. In many more there are not enough men serving sentence to be employed without financial loss. But whatever the reason may be in a given instance, it is certain that a great majority of California's misdemeanants spend their days in jail without anything in particular to do.

Now this enforced idleness combines with a crude congregate system of handling prisoners to make discipline a farce. As an

[4] Penal Code, Sec. 1613. Political Code, Sec. 4041, subdivision 29.

abstract proposition, who would think of locking up a lot of men in an empty room and expect them not only to behave but to improve themselves? Yet this same impossible result is presumably supposed to come from a jail sentence. As a matter of fact, something very different happens. Sodomy has been discovered in a few instances and strongly suspected in many more. Where women prisoners are handled by male officers and where male "trusties" are given access to the women's department, there is at least no assurance that immoral practises are not indulged in. The attitude of jailers as well as prisoners toward matters of sex is often anything but wholesome.

At one time while inspecting the Los Angeles County Jail we saw a group of prisoners playing "penny ante." In the San Joaquin jail the "openers" were evidently higher, for we saw considerable silver on the bench where a group was playing poker. In some other jails the men are not allowed to have money, but they may pay their gambling debts by orders on the deputy sheriff or jailer who holds their little "pile."

The educational side of county jail life is aptly described by the Missouri State Board of Charities and Corrections:[5]

> A short time ago a jail was visited in which there were only three prisoners. One of these had served at different times twenty-five years in state penitentiaries. He had a strong personality, was interesting and at home in jail. The young men for whom he was playing the part of entertainer and consoler were serving thirty-day sentences for a misdemeanor. Their lives of industry and good citizenship had been interrupted by a month of enforced idleness. They were given an opportunity to see the best side of criminal life from a past master in the work of crime. They had experienced the luxury of having no responsibilities, of being warmed and fed, and that without any effort on their part. Such experiences would perhaps be no temptation for men with good family connections. But with such as above described can we wonder that often the question is asked as to whether or not the honorable life pays? The sentence of these men had been brief and not very distasteful. They had learned new ways of evading officers and an easier way of making a living. If at the expiration of their term of imprisonment they came out with the determination to lead lives of crime, the state is to a large extent responsible. They have had a chance to learn that for certain men a life of crime is attractive. They look at it as a proposition in which there is much to gain and little to lose. At the worst, one can only be arrested and cared for by the state. Besides, the first imprisonment has cost them their social standing in the communities from which they came.

Another feature of jail life is the "Kangaroo Court." This is an organization of prisoners for the purpose of holding mock trials. As a

[5] Ninth Biennial Report, 1914, p. 69.

form of self-government and a means of enforcing cleanliness and order in congregate jails it is not altogether bad; but it has possibilities of injustice which make it an institution to be condemned. Following are the "Rules of the Kangaroo Court" of Kern County, California.

January 1, 1915.

I. All persons entering here shall be searched by the sheriff of the Kangaroo Court.

II. The judge has the power to fine an inmate from one to five dollars, to be used for tobacco and sugar for inmates.

III. All persons must bathe and wash their clothes at least once a week.

IV. Throwing rubbish or spitting on the floor is strictly forbidden.

V. Inmates must keep away from the door and windows unless wanted there.

VI. Noise must cease at 10 p. m., remaining so until 7 a. m.

VII. The judge shall appoint inmates to do necessary work each week.

VIII. Any person disobeying above rules shall be punished as the judge sees fit.

These rules have been approved by the sheriff of Kern County.

When making an inspection of Imperial County Jail, we had the novel experience of being taken for a prisoner and being tried by the Kangaroo Court for "breaking into jail without consent of the inmates." We were found guilty and fined tobacco for the crowd. The Illinois State Charities Commission reported in 1911 that 29 county jails permitted kangaroo courts.[6]

Knox County prisoners have a Kangaroo Court, but the sheriff carefully supervises it; for example, he will not allow the prisoners to fine one another unless the person fined agrees to it.

This statement implies what is doubtless true, that in other jails prisoners are fined whether they agree to it or not; but it makes little difference; the prisoner is likely to "agree" when he knows that he is apt to be hazed if he refuses. In regard to the Peoria County Jail:

The men do most of their own disciplining by means of the Kangaroo Court. They have two dark rooms for punishment cells, but the usual method of dealing with a man who has violated one of their laws is to sentence him to hard labor.

We have often had occasion to suspect that if a prisoner's color, the angle of his nose, or some personal habit did not please his mates,

[6] Illinois State Charities Commission. Second Annual Report. 1911. pp. 44, 300, 312, 316, 322.

he would be compelled to do a large share of the daily or weekly scrubbing.

Vermillion County Jail:

> The prisoners in the various wards have Kangaroo Courts. As they are allowed to keep their money in jail, it would be very uncomfortable for prisoners who refused to join the court and thus failed to contribute their money for the purpose of newspapers, tobacco and other articles which the county does not furnish.

Another aspect of the jail problem is the *fee system*. Perhaps the chief difficulty with the financial administration of our jails is this. The duty of caring for prisoners is often regarded by the sheriff as a side issue, if indeed not quite outside his proper duties. In line with the custom of requiring fees for certain services rendered by other county officers, e.g. the recording of deeds, he feels that there should at least be extra compensation for his responsibility as jailer. There are two ways in which he may get such extra pay in California. He gets mileage and a per diem for transporting prisoners, and he may have a margin of profit on the feeding of prisoners.[7] We are here concerned with the latter. Section 1611 of the Penal Code provides that:

> The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of supervisors, and, except as provided in the next section, to be paid out of the county treasury.

This section sounds innocent enough, but what actually happens is suggested by the table of rates showing what in the various counties was considered to be "reasonable compensation."[8] In 1914 the food allowance varied from 10c per day in Santa Clara County to $1.05 in El Dorado. To be sure, the situation is not the same in these two counties; Santa Clara has more prisoners, cooking is there done by "trusties," and San José is a good market town; while Placerville is farther from markets, food is prepared by the jailer's wife, and the number to be fed is small. However, it is fair to compare Santa Clara with San Diego. In both jails the number of prisoners varies from 50 to 100, cooking is done by "trusties," and good market

[7] California State Board of Charities and Corrections. 1916: 51. Penal Code of California. Section 1611.

[8] California State Board of Charities and Corrections. 1914: 133.

facilities are available. But in Santa Clara the sheriff was, at the time of our study, allowed only 10c per day per prisoner, while in San Diego the allowance was 37½c. Apparently one of two things was happening: one lot of men was being underfed, or one sheriff was making a profit.

A description of *state supervision* may be permitted to round out our account of the county jail system in California.

CHAPTER 683, STATUTES OF 1911

Inspection and Investigation by Board of Charities and Corrections

Sec. 3. The board is hereby empowered and authorized, and it shall be its duty as a whole, or by committee, or by its secretary, or other agent whom it may authorize, to investigate, examine, and make reports upon the charitable, correctional, and penal institutions of the state, including the state hospitals for the insane, of the counties, cities and counties, cities, and towns of the state, and such public officers as are in any way responsible for the administration of public funds used for the relief or maintenance of the poor. All the persons or officers in charge of or connected with such public institutions, or with the administration of such funds, are hereby required to furnish to the board or its committee or secretary such information and statistics as they may request or require, and allow such board, committee, or secretary free access to all departments of such institutions and to all of their records. . . .

Plans for New Jails and for Alterations

. . . All plans of new buildings, or parts of buildings for any of the public institutions coming under the provisions of this section, or any additions or alterations in such buildings shall, before their adoption by the proper officials, be submitted to the board for suggestions and criticism.

Reports and Special Information

Sec. 6. Any public officer, superintendent, manager, or person in charge of any said public institution, or with the administration of said funds, who refuses or neglects to furnish said board, its committee, or secretary, the information and statistics which they may request or require shall be subject to a forfeiture of fifty dollars, to be recovered as provided in section 4 of this act for disobedience of a subpoena.

CHAPTER 338, STATUTES OF 1913

Records Prescibed

Sec. 1. It is hereby made the duty of the state board of charities and corrections to prescribe forms of records for the use of the superintendents of county hospitals and almhouses, and jailers in charge of county jails and city prisons, in keeping the records of persons received into or discharged from such county hospitals, almshouses, jails and city prisons.

Sec. 2. Books of record for the records so prescribed by the said state board of charities and corrections may be printed at the expense of said board and furnished to such county hospitals and almshouses, county jails and city prisons, at the cost thereof.

Sec. 3. It shall be the duty of the superintendent in charge of any such county hospital or almshouse and the jailer in charge of any such jail or city prison to keep the records prescribed by the state board of charities and corrections as fully and completely as possible, and any superintendent or jailer who neglects and fails to keep the records thus prescribed shall be guilty of a misdemeanor.

Under the provisions of this law, the original form of which was adopted in 1903, the secretary made a flying trip to each county about once in two years. He assembled a good deal of information, made suggestions as to jail management and urged the erection of new jails in numerous instances. Beginning with 1914 more frequent visits were made, many minor improvements were secured, and many more data were assembled both concerning the jails and their inmates. Advice was given as to the construction of new jails, plans and specifications were revised. But when a jail was found to be notoriously insanitary or mismanaged there was nothing that the state department could do to force the hand of the local authorities. We shall refer later to the laws of some other states which make it possible to meet such situations as this much more satisfactorily.

With the exception of probation and parole for misdemeanants we have now a fairly complete picture of the county jail system as it is found in California. We shall not attempt a detailed description of conditions in other states, but will call attention to evidence that the California institutions and methods are typical.

We cite first Miss Hinrichsen's summary concerning *Illinois*.[9]

The statement was made in a preceding paragraph that the jails in Illinois are a powerful factor in the promotion of crime and degeneracy. I have attempted to develop this statement in detail. In summing up the developing paragraphs, I present the following reasons for my statement: (1) Because of their physical construction. (2) Their method of operation. (3) The fee system of feeding. (4) The enforced idleness.

1. Their physical construction is such that they are insanitary, ill-ventilated, dark, and too small or too poorly planned to permit of the classification of prisoners, or of the separation of the healthy from the sick. The health of the men must suffer. Communicable diseases are certain to be passed around among the men. The lack of fresh air, exercise and stimulating interests makes the men particularly susceptible to disease, both physical and mental. The herding together of all classes, regardless of age or degree of crime, spreads a moral contagion through the jail; and, as with the physical contagion, there are no counteracting influences.

[9] Institution Quarterly. Springfield. Vol. 7, No. 1. pp. 9-15.

2. The method of operation may make even a modern jail vilely insanitary. Clogged air shafts, disabled plumbing, filthy bedding, the common towel and drinking cup, the tub in which all must bathe, the lack of steam and sunshine for towels and bedding, the closed and grimy windows, the presence of rats and vermin, failure on the part of the sheriff to enforce the classification law—these conditions can make, and in certain instances have made, even the better jails as dangerous as the worst. On the other hand, several very poorly constructed jails are made habitable by the determination of the sheriff to eliminate as many evils as possible.

3. The enforced idleness predisposes the prisoner for every kind of moral, mental and physical contagion.

4. The fee system of feeding, long recognized as a legitimate source of profit for the sheriff, proves to be a cause for rousing in the prisoner a contempt for the law and sends him forth from the jail a greater enemy to society than he was when he entered it, and more fully prepared for a life of crime.

Physically, mentally, and morally, the men go forth worse than they were when they entered, and they go forth hating the travesties called laws which have been repeatedly violated by the officials in their efforts to punish them.

If anyone should be tempted to regard Miss Hinrichsen's statement as a flight of imagination, let him read the concrete word-pictures of 99 of Illinois' 101 county jails. Then he will see the evidence accumulate which thoroughly justifies her excoriation of these institutions.

The condition existing until recently, and in considerable degree even to the present, in *Alabama* is thus described by Dr. W. H. Oates, State Prison Inspector:[10]

While most of those who are confined in jails are there simply for safe-keeping and awaiting trial, and therefore presumptively innocent, they have been, as a rule, housed in unclean, ill-ventilated, foul smelling structures, with no room for exercise, and scant, if any, provisions for, and no incentive to, personal cleanliness, and exposed to every peril of fire and disease. Their food has been coarse, ill-prepared and ill-served, and every auxiliary with which modern science fortifies the physical constitution against the inroads of disease has been conspicuous by its absence. Nor has there been any provision whatsoever against the idleness of mind which begets viciousness and is the fertile breeding ground of crime.

In my own state, Alabama, the above described regime has heretofore existed. Everything in the state seems to have grown and improved with the single exception of the jails. No additions or improvements have been made in a number of jails throughout the state since they were originally built many years ago.

Absolute ignorance of the rudimentary principles of ventilation and sanitation is evidenced in the building of these old jails, and, in most cases, the bulk of the money expended was placed in a commodious residence for the sheriff, with one to two

[10] National Conference of Charities and Correction. 1914: 40-41.

small rooms in a wing of the building for the jail, in which rooms, placed in the center, are the cells, usually eighty per cent solid metal with twenty per cent openings. The elementary principles of sanitation were totally ignored, and so-called disinfectants were used in lieu of the scrubbing brush and soap. Black was the favorite color used in painting the interior of the jails, resulting in a dungeon-like darkness which was almost invariably contributed to by dirty windows obstructing the entrance of light.

Isolation and segregation of prisoners have been totally ignored. The hardened criminal, first offender, and the juvenile prisoners have been confined in the same cells, thus converting our jails into veritable schools of crime, and the constant contamination by association must have been incalculable. Another deplorable fact, and one which I am ashamed to say, still obtains, is that there are no matrons in any of the jails of the state of Alabama. Female prisoners, regardless of color, or the crime of which they are accused, are cared for by the male deputies. . . .

The fee system, that far-reaching, deplorable, pernicious and unwittingly criminal method of compensating sheriffs and other officers obtains today in Alabama. The result of this system nearly beggars description; it introduces into our jails the bad effects of the almighty dollar; prisoners are arrested because of the dollar, and, shame to say, are frequently kept in captivity in these steel cages for months awaiting trial on account of the almighty dollar, so that certain officers may profit by feeding them at a less amount by far than the state allows for their feeding.

This general statement of Dr. Oates is borne out by detailed descriptions of individual jails, such as may be found in the biennial reports of the prison inspector.[11]

No cases of *contract labor* were found in California, and it was taken for granted that this evil was limited to certain state prisons. But New Haven, *Connecticut,* furnishes an instance of this in a county jail. During the five years ending December 31, 1918, the Metropolitan Chair Co., paid the county $7000 per annum, and was "entitled to the service of all of the male persons not incapacitated by illness, except some twenty or twenty-five whose services may be required by the jailer for other purposes, and except also bound-over prisoners and prisoners confined on civil processes. The company is entitled to the services of such prisoners for ten full working hours on Monday to Friday inclusive, and nine full working hours on Saturday." The County Commissioners agreed to furnish artificial light when necessary in certain parts of the jail and the company was entitled to the use of various parts of the jail and yard for storage. Heat and power were to be furnished by the county. Under this contract the county apparently received $7000 from the company.

[11] Report of the State Prison Inspector of Alabama. 1916.

But the value of power furnished during the year ending September 30, 1916, amounted to $2500, rebates on account of reduction of working hours were $3550, and the value of the rental, light and heat is estimated at $4800. Thus it appears that the county lost about $1000 a year on the transaction. This is not to mention the exploitation of prisoners, interference with discipline and further development of anti-social attitudes.[12]

The California study did not include an investigation of court records to discover how general the practise of *fining* petty offenders may be. However, in compiling statistics for the 1916 report of the State Board of Charities and Corrections we found that one-fourth of the county jail prisoners were released upon payment of all or a portion of the fine imposed. In the Springfield, Illinois, Survey special attention was given to the fining system, and Potter's findings are worth reviewing:[13]

> Fines, as we have seen, were in 1913, by far the most usual methods of disposing of Springfield offenders. Indeed, of the 152 persons found guilty by the county and circuit courts out of a considerable variety of sentences, 70, or 46 per cent, were fined, many of them, however, receiving jail sentences also. Of the 1,119 sentences imposed on persons coming before justices of the peace and the city magistrate, 791, or 71 per cent, were fines. Moreover, most of the fines were for small amounts. Of the county and circuit court fines, 43 per cent were for $10 or less, 76 per cent for $25 or less, while of the fines assessed by the justices of the peace and city magistrates 60 per cent were for $3.00 or less, 71 per cent for $10 or less, and 84 per cent for $25 or less.

The failure of fines to serve as a deterrent for many offenders is shown by the fact that 23 per cent of the persons fined in Springfield in 1913 were rearrested again within the year, and 13 per cent were again convicted. It hardly seems likely that fines will keep gamblers from gambling, drunkards from drinking, vagrants from begging, or prostitutes from soliciting. The imposition of a small fine seems about on a par with the short jail sentence so far as displacing anti-social habits is concerned. It offers no more hope when the offender is feebleminded or suffering from a nervous disorder. Moreover, there is a certain injustice in fines as a means of punishment:

[12] Delinquent, Jan., 1917. pp. 5-9.

[13] Potter, Zenas L.: "The Correctional System of Springfield, Illinois." Springfield Survey. New York. 1915. pp. 17-30.

To a man of some means a fine of $3.00, or even $25, is slight punishment. But on the laborer making $1.75 a day, and perhaps still more on his family, which is already a sufferer, even a fine of $3.00 falls heavily. The offense may be the same and the fine the same in two cases, and yet in the payment the poor man may suffer the rich man's penalty many times over. One hundred and thirty-eight persons in Springfield went to jail in 1913 because they were not able to pay their fines in whole or in part, 44 being unable to meet even a fine of $3.00 plus $1.35 of costs. Many of the largest fines were assessed against vagrants who had no money at all. In such cases fines result in nothing less than sending people to jail for being poor.[14]

This, of course, does not deny the fact that in certain instances the levying of a fine may help to prevent the repetition of technical offenses, especially when used in connection with a suspended sentence.

All in all, the county jail system presents a pretty dark picture,[15] but fortunately something better is already in the making. In the succeeding chapter we shall describe some other ways of caring for misdemeanants, ways actually in use at the present time.

[14] Potter: *op. cit.*, 29-30.

[15] For data concerning conditions in different states see:

Colorado State Board of Charities and Corrections. Biennial Reports. 1898—. e. g., 1916: 41-44.

Connecticut State Board of Charities. Biennial Reports. e. g., 1914: 38-45.

Maine State Board of Charities and Corrections. Annual Reports. 1913—. e. g., 1916: 33-54.

Michigan State Board of Corrections and Charities. Biennial Reports. 1871—. e. g., 1916: 7.

Missouri State Board of Charities and Corrections. Biennial Reports. 1898—. e. g., 1914: 68-71.

New Hampshire State Board of Charities and Corrections. Biennial Reports. e. g., 1916: 108-112.

New York State Commission of Prisons. Annual Reports. 1895—. e. g., 1916: 124-406.

Prison Association of the State of New York. Annual Reports. 1845—. e. g., 1915: 2: 260-494.

Oklahoma Commissioner of Charities and Corrections. Biennial Reports. 1908—. e. g., 1916: 31-36.

Tennessee Board of State Charities. Biennial Reports. e. g., 1917: 28-9.

Virginia State Board of Charities and Corrections. Annual Reports. 1909—. e. g., 1916: 17.

Klein, Philip: "The County Penal Institutions of New Jersey." Delinquent. Jan., 1918. pp. 14-18.

Abbott, Edith: "The Real Jail Problem." Chicago. Juvenile Protective Association. 1915.

Abbott, Edith: "The One Hundred and One County Jails of Illinois and Why They Ought to Be Abolished." Chicago. Juvenile Protective Association. 1916.

CHAPTER II

Substitutes for the County Jail System

If the county jail system which we have just described were the only available means of dealing with petty offenders, our problem would be quite overwhelming. But fortunately other methods have been tried, and experience in using them should be of great assistance in devising practical substitutes for the county jail.

One of the first for us to consider does not necessarily do away with the local penal institution at all; it is *state control* of local jails. This was brought about in Great Britain in 1877. Three acts were passed for the three kingdoms. Every local prison—i.e. jail for the confinement of persons not sentenced to penal servitude—was transferred from the control of local "visiting magistrates" to a central administrative authority. The expenses are paid out of the central funds. A good many jails have been found superfluous and have been closed. In 35 years the number of such prisons in England was reduced from 113 to 56, and their population fell from 21,000 to 15,000.[1]

Numbers of the American states have provided for state supervision by laws similar to the California statute quoted above. But the nearest approach to state control has been made by Alabama. The act of 1911, amending the original act to create an office of state prison inspector provides among other things:[2]

Sec. 5. The duty of the Inspector is to inspect at least twice a year every county or city jail, except those maintained by cities or towns of less than 10,000 population.

Sec. 7. The Inspector has power to order the local authorities to put a jail or almshouse or city prison in proper sanitary condition, and to make such repairs, alterations, additions as he may deem necessary. The only appeal from his order is to the Governor.

Sec. 8. The Inspector has power to condemn jails and prohibit their use, when in his opinion insanitary conditions warrant it.

Sec. 12. The Inspector has the authority to formulate such rules and regulations as he may deem necessary with reference to hygiene, sanitation, cleanliness and healthfulness of all jails and almshouses in this state including town and city prisons.

[1] National Conference of Charities and Correction. Report of Committee on Correction. 1914: 24.

[2] General Acts of Alabama. 1911. p. 356.

Sec. 14. In the event of failure to carry out orders for repairs or alterations or additions, the Inspector may remove the prisoners to the jail of another city or county or to the state penitentiary. The same power is given him whenever he finds it necessary to condemn a jail.

Sec. 15. The penalty for refusal to obey the orders of the Inspector is conviction of a misdemeanor and fine of $25 to $500.

In the *detention* of persons awaiting trial some progress has been made over the typical congregate system. The California law, for example, requires that persons awaiting trial must be kept separate from those serving sentence;[3] that women prisoners shall be in charge of a matron and segregated from the men;[4] that children under the age of sixteen shall not be detained in jail at all.[5] To be sure, this legal segregation is not always carried out, but wherever there is a well organized juvenile court and detention home for juveniles, children at least are not subjected to the influences of the congregate jail. In Philadelphia similar provision has been made for women through the establishment of a house of detention for women and girls under the jurisdiction of the misdemeanants' division of the municipal court.

This House of Detention facilitates work by having in it the court room, the medical clinic, the psychological clinic, adequate quarters for the probation officers and the opportunity to classify the cases to be detained. Since January, 1917, it has housed all the girls and women needing detention while awaiting court action by the Municipal Court—averaging not far from one hundred new cases a month. It has also given shelter to girls and women held for the federal authorities as witnesses or prisoners in white slave or drug traffic cases.[6]

Court procedure, together with *probation* and *parole* is another field for experiment. In California provision is already made for adult probation and the paroling of misdemeanants.[7] However, our discussion of the "floater" custom indicates the way in which these laws are often utilized. The chief difficulty seems to be that the administration is placed in the hands of men permeated with old traditions, whose minds have little or no appreciation of the possibili-

[3] Penal Code. Sec. 1598.

[4] Penal Code. Sec. 1598, 1616.

[5] Juvenile Court Law. Sec. 14, Chap. 631, Stats. 1915.

[6] Rippin, Jane Deeter: "Municipal Detention for Women." National Conference of Social Work. 1918: 132.

[7] Penal Code, Sec. 1203. Chap. 230, Stats. 1913.

ties of probation and parole for certain offenders. James A. Collins, formerly City Judge of Indianapolis, told the National Conference of Charities and Correction in 1914 what he had done in the direction of "humanizing a court."[8] Judge Collins presented a program of nine points, all of which have doubtless been tried elsewhere, but which taken together are illustrative of a forward movement in the courts which deal with petty offenders.

1. The Suspended Sentence

During my term I suspended judgment in 700 cases and withheld judgment in 7,559. Of this latter class less than 3 per cent were returned for a second or subsequent offense.

2. Paying Fines in Installments.

Out of 3,832 persons placed on probation to pay fines 3,220 paid their fines and costs in full, while 102 were given credit for partial payments and committed to serve out the balance. However, 205 were unable to pay anything and were committed to the jail or workhouse. In 152 cases the circumstances of the families were such that the court felt justified in withholding judgment rather than committing the defendants. Out of the entire number placed on probation 143 did not live up to their agreement with the court and re-arrest was ordered in each of these cases.

3. Drunkenness and Pledge System

In all cases of first offenders charged with being drunk and where the defendant had others dependant upon him for support, the court made it a condition on withholding judgment or suspending the sentence that the defendant take the pledge for a period varying from six months to one year. Three hundred and eighty-two pledges were taken, all of which were kept faithfully but 27.

4. Medical and Surgical Treatment

It was not an infrequent experience for the court to find persons charged with offenses of a character that disclosed physical or mental defects. Arrangements were always made for medical care and treatment. In meeting the problem presented by such conditions the court had the coöperation and assistance of the superintendent of the City Hospital, as well as some of the best known physicians and surgeons of Indianapolis.

5. Separate Imprisonment of Minors

Through an arrangement with the superintendent of the workhouse an unused wing of the building was set apart for such offenders and in this way they were kept separate and apart from the old and hardened offenders.

6. Restitution.

As part of the probation plan the court required every person charged with any offense involving the loss or damage to property and injuries to the person to make full and complete restitution to the injured party before the final disposition of the case.

[8] National Conference of Charities and Correction. 1914: 26-33.

7. Separate Session for the Trial of Women.

Wednesday afternoon was set aside for the trial of such cases. The legislature of 1911 enacted a law providing for the appointment of a court matron in cities of the first and second class, and this act prescribed her duties as follows: "She shall, under the direction of the judge of the city court, investigate and report to such judge upon the past histories, conditions of living, morals and character and habits of all women and girls awaiting trial in such city court and shall have supervision of such women and girls while not in actual custody until final disposition of the charges against them.

8. Domestic Relations Session

Thursday afternoon was set aside for the consideration of cases involving domestic relations.

9. *Employment*

Through the probation department employment was found for some 600 persons who had come before the court as delinquents.

For convicted misdemeanants *outdoor work* has been provided by numerous counties and cities. We have visited road camps for these men in several California counties. In San Bernardino we found two camps in the mountains. A gang of forty to fifty prisoners was working on the county roads in the vicinity of each camp. Some of their work was repairing, some of it the building of new roads. The prisoners worked eight hours a day under the supervision of armed guards. There was nothing of the honor system, but they had the advantages which come from fresh air, regular hours, steady employment and wholesome food. At night they slept in iron cages covered with canvas. Their beds were wooden or steel bunks in tiers, furnished with blankets. Each tent-cage had room for about twenty-five men; it was kept clean by a "trusty" appointed for the purpose. Food was prepared by a paid cook assisted by "trusties." In Los Angeles County the prisoners were paid ten cents a day, which was intended as a "stake" for the return to a life of freedom. Family deserters received no wage themselves, but $1.50 was paid by the county to their families while the men were working on the road.[9] Another sort of outdoor work is provided on the county poor farm. This has been tried with success in Orange County, California. It has been more widely used in New Hampshire.[10] In the latter case, however, it has not been possible to furnish enough work in the winter time when the

[9] For a description of the road work in Kalamazoo County, Michigan, see Annals of the American Academy. March, 1913, pp. 90-91.

[10] Page, Edwin L.: "New Hampshire's Experiment in Using Prison Labor to Support Paupers." An. Am. Acad. March, 1913. pp. 115-121.

number of prisoners was greatest. Moreover, neither farm nor road work is just what is needed by every sort of man who happens to get in jail.

Another experiment has been tried, apparently with a goodly measure of success, in the Washington County Jail at Montpelier, Vermont. The Vermont legislature in 1906 passed a law permitting the employment of county jail prisoners outside the jail. The Washington County experiment was begun in the spring of 1907. It is thus described by Sheriff Tracy:[11]

> The men are all compelled to work at laborer's work. No matter what his trade or profession has been, he has to do the work of a common laborer. The reason for this is, that this is a strong union center, but in this way we have had the support of the various labor unions. The pay for a laborer in this section is $2.00 per day. Under our system the penal board has taken $1.00 as the share for the state, and has allowed the men to have the balance earned. During the last six years we have worked over 1,200 men outside the jail. The men start from the jail before seven o'clock in the morning, taking their dinner pails in hand and work sometimes two or three in a place, and very often alone, scattered over a radius of twelve miles, and during this time we have never lost a man. During the first three years we had three try to escape, but during the last three years none have made the attempt. These men go to their work dressed like the ordinary laborer and no one not knowing them would for a minute suspect them to be prisoners.
>
> The jail office has become an employment bureau. . . . We have had many a man serving a sentence of from three to six months or a year support his family and keep them from charity, while serving sentence. . . .
>
> No prisoner is denied the privilege in the evening of going to the newstand to buy the daily paper, or to the tobacco store to buy his tobacco or to any other store to purchase what he needs. . . .
>
> We know we have seen some men start with a new purpose in life, going out to try and redeem the past. The locking of a cell door is an unknown quantity with us. . . .[12]

Another method of caring for misdemeanants, represented by the *workhouse* or *house of correction*, as usually found, is practically an imitation of the state penitentiary. That is, it is little if anything more than an effort to apply to petty offenders the traditional plan for

[11] Quotations are from Delinquent, Nov. 1913, pp. 1-3. See also: Delinquent, Oct., 1917, pp. 8-9; National Conference of Social Work, 1918: 253-255; Atlantic Monthly, 108: 170-179.

[12] For other descriptions of outdoor work for misdemeanants see: Delinquent, Jan., 1917, p. 6, Litchfield County, Conn.; Journal of Criminal Law, 6:684-688, Wisconsin.

handling felons. However, some of these institutions have made innovations worthy of careful study.[13]

Apparently one of the most successful has been the Detroit House of Correction. Beginning in 1861 with Zebulon Brockway, it has had a succession of unusually capable superintendents, who have, in addition to rendering the few weeks or months of confinement of some value to the prisoners, made the institution self-supporting.[14] The purpose of the House of Correction is thus described by Brockway:

> It was intended that the house of correction should accomplish much for the hitherto neglected class of common jail prisoners. Mental and moral isolation, under our "social-silent" or "Auburn" system, thorough supervision, strict discipline, with complete occupation of all their waking hours—this was the system designed for improvement of the prisoners, who were to be vigorously engaged in instructive and remunerative mechanical work, with opportunity to earn something for themselves while imprisoned, either by allowance for overwork or by a coöperative system, or both together. They were to be supplied with employment on their release and supervised for a period. . . . A complete educational plan was early outlined in the mind of the management, which should include some effort at education for all the prisoners, old and young, men and women, short and long sentenced prisoners. Special efforts for the religious impression of the prisoners by public, private, and carefully arranged ministrations were also included in these early plans.

The Chicago House of Correction has not had the financial success of the Detroit institution, but it has made progress in another direction. It established in 1915 a psychopathic department.[15]

[13] The line of division between what is here called the workhouse and the sort of institution to be presently described as prison farm is not altogether distinct. However, there is a general distinction, in spite of the fact that some institutions officially known as workhouse or house of correction have been classed with the farms. As samples of the workhouse type we refer to the following: Detroit House of Correction. Annual Reports. 1862——. Chicago House of Correction. Annual Reports. 1872——. New York City Workhouses. Department of Correction. Annual Reports. Allegheny County (Pittsburgh) Workhouse and Inebriate Asylum. Annual Reports. 1870——.

[14] Detroit House of Correction. Annual Reports. Journal of Criminal Law, 5: 190-191. Brockway, Z. R.: Fifty Years of Prison Service. New York. 1912. pp. 68-85. The following quotation is from pp. 76-77.

[15] Kohs, Samuel C.: "A New Departure in the Treatment of Inmates of Penal Institutions." Publication of the Research Department, Chicago House of Correction. 1915. pp. 4-7. See also Journal of Criminal Law, 8: 837-843.

All those between the ages of 17 and 21 who are sentenced to the House of Correction are subject to call for psychological diagnosis. Of these there are a number who are recommended to the Psychopathic Department by the Boys' Court. To this group special attention is paid. Whenever the above list is exhausted, older inmates, particularly recidivists are interviewed. . . .

The interview is begun with questions regarding his school and trade training, his industrial history, the positions he has held, the amount of salary received, the length of service in each and why he left; the reasons for the periods of unemployment; the work he is best able to perform, and the kind he likes best; his ambition his prospects of employment when released. We then obtain a full and detailed account of the criminal career of the individual from the day he first found himself in difficulty. Any past sicknesses, accidents and diseases are noted. Inquiry is made of any past examinations, mental, physical, or both. The subject is then questioned regarding his father, mother, siblings and other relatives, the same information being elicited regarding them as was obtained from him personally. . . . It is but natural to expect that this history will only approach accuracy, but will never attain it. The services of a field worker are necessary to verify and supplement the data.

With this personal-industrial-sociological-family history more or less complete, we pass on to our mental tests. Our main instrument here, is of course, the Binet Scale as adapted by Dr. Goddard at the Vineland Training School. . . .

On the basis of the information obtained a report on each individual case is made and the record placed in the hands of the Superintendent who acts upon the recommendations. As a result of the examination, any of these three courses may be followed, depending upon general conditions: (a) the inmate may be placed in a special class for mental defectives; or, (b) he may be placed at work that will benefit him most, work that will give him the training and experience necessary to gain him entry into that industry after his release; or, (c) he may be merely placed at ordinary labor on the grounds.

Here is the beginning of a program of individualization, but the limited facilities of the house of correction together with the short sentences makes it hard to achieve any permanent results.

Bearing resemblances both to the house of correction and to the outdoor work already described is the *local farm colony* for misdemeanants. Such institutions have been established by the cities of Washington, D. C., Cleveland, Ohio, Kansas City, Missouri, Houston, Texas, and Lynchburg, Virginia.[16]

[16] Washington—District of Columbia Workhouse. Annual Reports. 1911—.
Cleveland—Nat. Conf. Char. and Corr. 1912: 191-195, 437-439. American Prison Assn. 1913: 180-186.
Kansas City—Board of Public Welfare. Annual Reports. 1910—.
Houston—Houston Foundation. Report. Dec., 1917.
Lynchburg—Virginia State Board of Char. and Corr. 1916: 21.

Probably the best developed of these municipal prison farms is the District of Columbia Workhouse near Occoquan, Virginia. This institution was established in 1910, and located on 1150 acres of land twenty-four miles south of Washington. Twenty-nine prisoners were first transferred from the old workhouse in the city. Their immediate task was to erect a barbed wire fence around some three acres of land enclosing tents which were used as temporary dormitories, dining room, store-house, kitchen, etc. By the first of August there were accomodations for 300 prisoners. The next 60 days were spent in the construction of a road a mile and a quarter long extending to the permanent location. Very plain, simple buildings were erected and in December the inmate population was moved. After the transfer to the new quarters, plans were laid for completing as quickly as possible the physical part of the plant for the safe-keeping, feeding and caring for 600 male and 125 female prisoners. This meant that two separate institutions had to be constructed. In addition to this it was necessary to make plans for the development of the land, clearing brush, cutting timber, pulling stumps, preparing the soil by use of lime and fertilizer.

Because of the thick underbrush, each guard was given a squad of only six prisoners. But as the work progressed, this number was gradually increased to about 20. This was only the beginning of a policy of progressive removal of restraints. In the fiscal year 1913–1914 the 10-foot barbed wire stockade fence was taken down. Now there is no longer any dependence upon walls, locks or bars, with the exception of twelve rooms used for disciplinary measures.

The buildings are all one-story, wooden, with a view to giving ample light and ventilation. The congregate system has been adopted. Two hundred prisoners are taken care of during the night in each dormitory. Cots are arranged side by side on raised platforms, and sufficient bedding—mattress, sheets, pillow, blankets and comforts—is given to each prisoner. All the buildings are equipped with steam heat, electric lights, and have other modern conveniences, albeit they are simple and inexpensive. While the prisoners sleep there are only five paid officers and six prisoner sentinels on guard, in spite of the fact that doors and windows are alike unbarred and unlocked. Escapes are very few in number.

During the evening, after the day's work is done, and on Sundays, the men are taken to a large building known as the rest hall and

library, where they are permitted to talk, play checkers, or read the daily papers. They have access to the library of 4,000 volumes. On summer evenings and Sundays the inmates are permitted to take the benches out into the yard, where it is possible to enjoy more freedom and have an abundance of fresh air.

The work on the 1150 acres of land includes road-building, construction of buildings, brick-making, stone-crushing, building and repairing wagons, painting and whitewashing the buildings, farming, poultry-raising, dairying and many other things that go with the up-keep of an institution.

The women's department is managed by women, and is some distance from the men's. The women do laundry work and make clothes for the prisoners of both departments. In addition a number of them work on the lawn and in the garden, do the painting and other sanitary work about the buildings. The women's department, like the men's, has neither cell, lock nor bar. The buildings are one-story, with neither wall nor fence around them. Nevertheless, during the first three and a half years, out of 3000 women handled only three were lost through escaping.[17]

The other municipal farms are more or less like the one at Occoquan. Their superiority to the county jail is well established. But they, too, are handicapped by the fixed, short sentences, and by lack of proper facilities for individualization of their wards. Moreover, they do not at all meet the problems of the small community.

The last mentioned difficulty is overcome in part by *state farms for misdemeanants*. Such institutions have been established in Massachussetts, Rhode Island, Indiana and New York.[18] The Massa-

[17] District of Columbia Workhouse. Annual Reports. 1911—. National Conf. Char. and Corr. 1914: 45-48. Delinquent. May, 1914. pp. 9-11. American Prison Assn. 1913: 199-211.

[18] Massachusetts State Farm at Bridgewater. Annual reports. 1854—.

Massachusetts State Board of Charity. Annual Reports. 1879—.

Rhode Island Board of State Charities and Corrections. Annual Reports. 1869—.

Indiana Board of State Charities. See Annual Reports, 1913—.

Indiana Bulletin of Charities and Correction. See numbers 1913—.

New York Superintendent of State Prisons. Annual Report. See those from 1914 on.

New York State Commission of Prisons. Annual Reports, see 1914—.

Prison Association of the State of New York. Annual Reports.

chusetts State Farm was established in 1854 as a State Almshouse, and bore that title until 1872 when its name was changed to State Workhouse. The present name was given it in 1888. From 1872 it has served as a combined charitable and penal institution, becoming almost an inebriate asylum.

In Rhode Island by the Act of May 28, 1869 (Chapter 814) there were established under the control and management of the Board of State Charities and Corrections, a State Workhouse, a House of Correction, a State Asylum for the Incurable Insane, and a State Almshouse, all located on the state farm at Cranston. That the workhouse was intended as an institution for misdemeanants appears in the words of the act:

> Section 6. All persons who have actually abandoned their wives or children without adequate support, leaving them in danger of becoming a public charge, or who may neglect to provide according to their means, for the support of their wives or children, or who being habitual drunkards, shall abandon, neglect or refuse to aid in the support of their families; all idle persons, who being of doubtful reputation and having no visible means of support, live without employment; all sturdy beggars who apply for alms, or solicit charity; all persons wandering abroad, lodging in station houses, outhouses, market-places, sheds, stables, or uninhabited buildings, or in the open air, and not giving a good account of themselves; all persons who go about from place to place to beg or to receive alms; all common prostitutes, drunkards and night-walkers; lewd, wanton, and lascivious persons in speech and behavior, common railers and brawlers; all persons who neglect all lawful business and habitually misspend their time by frequenting houses of ill-fame, gambling-houses and tippling shops; all common cheats, vagrants or disorderly persons; shall, on conviction of either of the aforesaid offenses by a justice of the peace, be sentenced to said State Workhouse, for a term of not less than six months and not more than three years.

There were 155 committments to the Workhouse between July 1 and December 31, 1869. Of these there were: 102 "common drunkards," 35 "vagrants," 14 "common prostitutes," 4 guilty of "neglect to support family." Their sentences were as follows: 76 for six months, one for eleven months, 65 for one year, 13 for more than one year. The report for 1869 goes on to say:

> In this connection it may be well to refer to a misapprehension that exists in the minds of many persons in relation to the practical working and objects of the Work House. To those who look upon the Work House as a prison, and the sentences to it as punishments for offenses committed, the punishments measured by length of time, seem out of proportion to the offenses. But this is a wrong view of the subject. The Work House is not a prison and it is hoped that every influence tending to make it such will be resisted. It was to save men and women from imprisonment in jails

and prisons, which has proved expensive and worse than useless to all concerned, that the Work House has been established.[19]

The male prisoners were at once put to work upon the farm at road building, laying foundations for new buildings, painting and carpentering. The women prisoners did the cooking, washing and other housework, as well as sewing in making and repairing clothes for the inmates.

Recent reports show that in the main this institution has retained its original character. In 1915 the number of new commitments was 720; 578 men and 142 women; 703 white and 17 colored; 434 born in the United States, 286 foreign-born; the offenses for which most of them were committed were: vagrancy 258, being a common drunkard 257; as to occupation the largest single group was laborers, 225; other groups were "mill hands" 136, "servants" 70, teamsters 50. The sentences were 531 for six months, 16 for nine months, 2 for eleven months, 152 for a year, and 19 for over one year.

Apparently the sole advantage which an institution such as this possesses over the municipal farm is that it is of service to small communities. The sentences are, however, somewhat longer, although we have no assurance that the length is adapted to the specific needs of individual misdemeanants.

The Indiana State Farm was created by an act of the 1913 legislature, and was opened in April 1915. The organic act provides that sentences of sixty days or over (for misdemeanants, of course) must be served at the State Farm instead of in county jails or workhouses. For shorter sentences the court has the option of the state institution or the local prison. The Farm is located near Putnamville, and occupies 1603 acres, of which 500 were under cultivation in 1917. The maintenance expenses are paid by the state, transportation to the Farm is paid by the counties, the expense of returning a discharged prisoner to the place of his committment or to such place equally distant as he may wish to go, is paid by the state and reimbursed by the counties.

It is interesting to know that since the opening of the state institution for male misdemeanants, the county jails of Indiana have begun to serve their real purpose, the detention of persons awaiting trial. At

[19] R. I. Bd. of State Char. and Corr. 1869: 26. The figures given above and the excerpt from the law are taken from the same report.

the time of the 1917 inspections by the Board of State Charities few prisoners were found serving sentences, and these were for short terms. Many jails were empty on the day they were inspected.[20] Furthermore, this was accomplished by establishing a state institution with a capacity of only 750, and which had in 1917 an average daily population of only 671.

New York State opened a Farm for Women at Valatie, October 1, 1914, for the reception of women over thirty years of age who had been convicted at least five times in the two years previous of a misdemeanor or lesser crime. The inmates were put at farm work such as planting, weeding, picking fruit, etc. They also made practically all of the clothing used. The Farm has not, however, been of service to very many women, the number of inmates almost never exceeding fifty. In December 1918, the institution was turned over to the State Department of Health for the accomodation, treatment and isolation of female patients.[21]

In addition to institutions devoted to all sorts of petty offenders there has been evolved a certain degree of *specialization* in dealing with limited groups, such as vagrants, inebriates, and prostitutes. Switzerland and Belgium appear to have been more successful than other countries in dealing with *vagrants* and *beggars*. In certain of the Swiss cantons laws regarding vagrancy—

> begin by separating the genuine unemployed from the thieves, loafers, and ne'er-do-wells who render this question so complicated in America. This is done by a system of travelers' relief books, issued by the Swiss Intercantonal Union, which includes fourteen out of the twenty-two cantons of which Switzerland is composed. This travelers' relief book sets forth all the facts necessary to identify and certify to the good faith of its owner, and the possession of this book is sufficient to permit its owner to travel through the fourteen cantons above mentioned without any work whatever being exacted from him. . . .

The Swiss have established:

> Two kinds of labor colonies, essentially different from one another: the so-called forced labor colonies or Zwansgarbeits-Anstalten to which are committed all culpable vagrants; and free labor colonies, the doors of which are open to all indigent persons who are not culpable. . . .
>
> The colony at Witzwyl is a forced labor colony instituted by the canton of Berne. The colony at Tannenhof is a free labor colony started by individual philanthropists.

[20] Indiana Bulletin of Charities and Correction. Mar., 1913. pp. 30-34. Indiana Board of State Charities. Report. 1917: 73, 146.

[21] Letter from Secretary, State Commission of Prisons. Jan. 24, 1919.

The two colonies had separate directors until the increasing expense of Tannenhof and the diminishing expense of Witzwyl induced the board of directors of the Tannenhof institution to offer the directorship of the Tannenhof colony to Mr. Otto Kellerhals, who had succeeded in making the colony of Witzwyl self-supporting. They are now, therefore, both under the same direction. . . .[22]

There have sprung up around Witzwyl a number of small colonies to which able-bodied inmates can be sent after expiration of their term and where they can be at once employed at a fair salary, removed from the temptation to drink, enabled to save a little money and gradually prepared for competition in the open labor market. They sign a contract to remain for a fixed term in the free colony. These free colonies are also havens to which the men may later return in time of unemployment or other misfortune.[23]

To deal with the same general groups of vagrants and beggars Belgium had before the war four poor-houses and two work-houses.[24] The system is thus described by Binder:

1. The workhouses are intended for individuals who shun work and try to find a living by exploiting charity; for those who have become homeless owing to laziness, intemperance, shiftlessness and immorality; finally, for those who become a public danger by keeping houses of prostitution. The poorhouses are intended for unfortunate persons who for one reason or another are unable to make a living, chiefly those in poor health, advanced age, or in hard luck.

2. In every case the question of being sent to one of the two kinds of institutions must be submitted to a judge or justice of the peace. The court must verify the identity, age, physical and mental condition, antecedents and especially the police record of the individual. In order to assist the judge in getting all the facts in the case of an individual not sufficiently known in the locality where he or she is apprehended, the department of justice at Brussels renders all possible aid. The decision of the court is final and cannot be appealed from except in the case of "white slavers."

3. If the sentence is too severe, the Minister of Justice may be asked to modify it or pardon the culprit; if too light, a corrective is found in having the parties either expelled from the poorhouse, if their presence should be morally dangerous to the inmates, or by having them resentenced by the Minister of Justice to the workhouse.

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[22] Kelly, Edmund: "The Elimination of the Tramp." New York. 1908. pp. 24, 25, 29, 34.

[23] Fetter, Frank A.: "Witzwil a Successful Penal Farm." Survey 25: 760-766.

[24] Binder, Rudolph M.: "The Treatment of Beggars and Vagabonds in Belgium." Journal of Criminal Law. 6: 835-848.

Van Schelle, A. F.: "A City of Vagabonds. The Largest Colony of Mendicants in the World, Merxplas, Belgium." American Journal of Sociology. 16: 1-20.

4. No person under 18 years is to be sent to a poorhouse or workhouse; persons between 18 and 21 years of age in those institutions must be kept separate from older inmates.

Sentences to the poorhouse are for one year or less, to the workhouse for two years or more.

6. Admission to the workhouse is by judicial process alone; to the poorhouse (1) by voluntary application to the mayor and aldermen of a commune, (2) by direct demand of the mayor and aldermen, (3) by judicial procedure.

7. The expense of parties sent to the poorhouse on the request of a commune are charged to it in their entirety; expenses of inmates of workhouses and poorhouses sentenced by a judge are divided equally between the commune, the province, and the State. The expenses for "white slavers" must be borne by the commune in which they plied their trade.

8. Every healthy inmate of a poorhouse and workhouse is obliged to work, but is legally entitled to pay fixed by the Minister of Justice for the particular work he does.

9. Discharge from the poorhouse must, according to law, invariably take place at the end of one year. Release may be granted before if the Minister of Justice concludes from the report of the director that confinement has served its purpose, or when the savings accumulated by the inmate amount to 15 francs, or when regular work is found for him, provided the savings amount to 15 francs, since no inmate should be set at liberty when he cannot find work at his trade. . . .

A special bureau examines all requests for pardon, and deals on an average with 10,000 petitions per year, coming from approximately 6,000 individuals. Nothing is left undone to avoid an infringement of individual liberty of deserving persons.

A voluntary board of visitors forms another safeguard against any possible injustice. The members visit in turn and biweekly the institutions to which they are assigned, hear petitions, examine the reports and conduct of prisoners, and endorse the requests for clemency if they see a good reason for doing so. The visiting board for Merxplas-Wortel consists of fifteen members, and of six members for each of the other institutions. They have the advantage of coming in personal contact with the petitioners and examining records on the ground.

Each of the colonies has shops; two of them have farms. Every inmate, unless sick, is required to work and is assigned so far as possible in accordance with his strength, aptitude and previous training. Inmates have erected buildings and assembled machinery. At Hoogstraeten there is a brewery and malstery, flour mills, bakery and soap factory; carpenter, cobbler, shoe-maker and locksmith shops; and gas works. At Merxplas the shops provide brick and tile making, tinning, weaving, tailoring, smithing, carpentering, boot and shoe making, foundry work, charcoal burning, plumbing, etc. Among the field crops raised are: oats, barley rye, carrots, potatoes, chicory, tobacco, flax, hemp, legumes. Wages are paid in accordance with ability, experience and kind of work. They vary in the poor-houses

from 9 to 71 centimes per day, and in the workhouses from 3 to 25 centimes. A canteen is maintained, but this does not prevent saving for a part of the wages is kept back until the time of release.

The only thing in the United States comparable to the Swiss and Belgian institutions for vagrants and beggars is the New York State Industrial Farm Colony. In January 1913 the State took title to 821 acres of fertile farm land, situated in the town of Beekman, Dutchess County, for the purpose of erecting and maintaining thereon a colony for tramps and vagrants. Since then no progress has been made toward the construction of buildings. Several causes have contributed to the delay Primarily there has been the legislative argument of "economy," insisting that existing institutions should be properly supported before new ones are launched.[25]

In the United States more has been done toward specialized care for *inebriates*—alcohol and drug addicts. In California, for example, they may be committed to the state hospitals, which are primarily for the insane. Under Section 2185c of the Political Code, they may be committed for a definite period not to exceed two years and subject to parole at the discretion of the superintendent of the institution. On June 30, 1916 there were 562 such persons in the California state hospitals, and 844 were admitted during the year ending that date.[26]

There the alcoholics have the benefit of a little hydrotherapy and other eliminative measures, but this is of short duration and is not followed up by the necessary training, employment and supervision. The liquor cases are put on the same wards with "mental" cases to the chagrin of the former and the annoyance of the latter. There is not enough work for them to do and conditions are not such that they can be employed very generally. They require a great deal of supervision and the attendants cannot be spared from their regular duties of looking after the insane. In addition, the alcoholics cause much disturbance on the wards and their presence is resented by some of the insane.

In the Napa State Hospital drug addicts are given the Towns-Lambert treatment. But hydrotherapy is more generally used. The packs and sprays are most employed, although some patients are given continuous baths. All are, of course, eliminative, stimulating

[25] Seventy-first Annual Report. Prison Association of New York. 1: 102.
[26] Cal. State Bd. of Char. and Corr. 1916: 46.

secretions and carrying off poisons through the skin. Electro-cabinets and vibrators are also used. Massage and shampoo are found helpful for some patients. Hyoscin is not generally used, neither is gradual withdrawal much practised, the theory apparently being that both hamper the development of will power. After this preliminary treatment the drug cases are transferred to the regular wards with the same general results as in the case of alcoholics. The argument in favor of this system is that many of the alcohol and drug habitues are suffering from some nervous (or mental) disease.

Similar state hospital treatment is available for a limited number of inebriates in Illinois, Minnesota, North Carolina and Massachusetts.[27] In New York City care is provided in Bellevue, Metropolitan and Kings County Hospitals.[28]

The Massachusetts State Farm at Bridgewater, which was started as a mixed institution and has remained more or less that to the present day, is, however, primarily a place for the care and detention of inebriates. Just when special attention began to be given this group does not appear, but we read in the report for 1873: "We do not hesitate to attribute nine-tenths of the commitments here to intemperance directly or indirectly." In 1892 the superintendent reported: "The increase of population has been principally in the workhouse department, through commitments for drunkenness, and is probably accounted for in the new drunk law. . . . The large number of men committed under the drunk law, together with the class of vagrants just referred to, if accounted drunkards, seems to make the workhouse department what I think it should be—an institution for the care and detention of cases of drunkenness, rather than a receptacle for everybody who is not wanted elsewhere." In 1914, of the 4321 new commitments, 3613 were for drunkenness.[29]

In 1904 Iowa established a State Hospital for Inebriates at Knoxville, 30 miles from Des Moines.[30] Although this is a more specialized institution than the Massachussetts State Farm, and hence possesses

[27] Summaries of State Laws. Compiled by Dallas Civic Federation. 1918. pp. 72-73.

[28] Weber, Joseph J.: "Handbook on the Care and Treatment of Alcoholic and Drug Addicts in New York City." 1917. pp. 5-7.

[29] Massachusetts State Farm. Annual Reports. 1854—. Massachusetts State Board of Charity. Annual Reports. 1879—.

[30] Iowa State Hospital for Inebriates. Biennial Reports. 1906—. Iowa State Board of Control. See Biennial Reports. 1908—.

great possibilities, it started without adequate hospital facilities and without sufficient means of employing the patients. It has, however, two noteworthy featues. One is that the patients who have been in the hospital 90 days may be employed at the brick and tile plant, receiving $1.00 per day for their work. The other is a parole system allowing the superintendent to parole into the custody of responsible persons patients whom he might not want to certify as being cured. The population of this institution has never been large; in fact, it decreased from 207 in 1915 to 141 in 1916. This is attributed by the Board of Control to the Harrison Law and its enforcement.

A similar institution known as the New York City Hospital and Industrial Colony was started in 1912 by the purchase of some 700 acres of land near Warwick, Orange County.[31] Weber describes the colony thus:

> Cases are admitted by commitment after application to the Executive Secretary of the Board of Inebriety. Drug addicts are committed by the courts. If discharged from the Colony before the expiration of the maximum term for which alcoholics may be committed, namely, three years, the patient is placed in the care of a field officer and remains under his supervision until the Board considers that he may be safely released, or until the expiration of the maximum term.
>
> Each patient receives a careful physical and mental examination. Based on the data thus gathered, an effort is made to improve physical defects by hygienic measures, refraining, as far as possible, from medicinal measures. The individual patient is thereby given an opportunity to learn what the normal is for him, and is taught not to lean upon props in the shape of medicine and tonics. . . .
>
> When discharged from the Farm Colony, the patient is placed, as far as possible, in employment away from his old environment, in a community the ideals of which approximate those of the farm community. Field officers keep in touch with him for a period when necessary in order to advise and encourage.

We have considered special methods of caring for two of the largest groups of misdemeanants—vagrants and alcoholics—we shall speak rather briefly of two smaller groups—prostitutes and family deserters. In connection with state reformatories for women and municipal farms, something far better than the county jail can offer is being done for *prostitutes*. But the only specialized institutions in the United States appear to be those maintained by the various state and federal commissions called into being by the war and a few private institutions. Because it has been operating for some time and its methods are pretty definitely established, let us take Waverly

[31] Delinquent. April, 1915. pp. 10-13. Weber: op. cit. pp. 5-6.

House, New York, as a sample of the best work being done in this field.

> Each young woman who comes to us has her own problems and needs quite distinct from those facing any other girl. Different forces have contributed toward her delinquency, and varied influences have been responsible for her continuance in an immoral life. Understanding of her mental and physical condition, her home environment, her education, and knowledge of any work or trade, aids us in determining a plan for helping her. The first step is to hear her story, then to verify it by thorough investigation. A physical and mental examination is given each girl. As a result of such observation, examination, and investigation, we have information which enables us to decide the best disposition in the case of each individual.[32]

While at Waverly House the girls receive some training for useful work and stimulation to desire an honest living. They are kept occupied as much as possible. Music, "talks," gymnastics, walks, rides and religious services are a part of their program. When they leave Waverly House, the girls may be placed on probation, sentenced to a reformatory, or sent to a custodial institution for the insane or feebleminded. All women requiring medical care are sent directly to a hospital for treatment. Those needing convalescent care are sent to the country to recuperate. Provision is made for girls having suitable homes to return to them. Positions are found for those who are able to work. Great care is taken to know that the relatives or friends to whom the girls go are able to help them; that places of employment are adapted to their abilities, and afford a protected environment. Thus the treatment and care at Waverly House are definitely individualized. The institution is practically a clearing house for "fallen women."

Family deserters are dealt with in a great variety of ways. The first problem is to secure a warrant for their arrest; their location and apprehension are frequently very difficult; return to jurisdiction, in case they have left the state is even harder; and after they have been brought back and convicted, we face the greatest problem of all. Frequently they are imprisoned, with the economic waste of the man idling in jail at the expense of the county while his family depends upon the charities. If he is fined, the penalty is apt to fall still more heavily upon the family. The work that is undertaken by courts of domestic relations and by many relief agencies is to effect reconciliation where this is possible, or to secure support of wife and chil-

[32] Miner, Maude E.: "The Slavery of Prostitution." p. 165.

dren without return of the husband, or to break up families by separation or divorce where that seems wise. Individualization within the limits of legal and financial resources is the essence of the most successful methods used in dealing with family deserters.[33]

In concluding this chapter, we may well consider *programs* for the future care of misdemeanants. A number of schemes have been projected. They include some features already in operation here and there, and some ideas drawn from the fields of social case work and clinical psychology. It should be noted in passing that in the various systems we have reviewed three fundamental defects remain: (1) the relatively fixed and short sentence, (2) lack of facilities for courts to learn the real personal needs of each offender, (3) relative uniformity of treatment within the institutions, i.e., lack of individualization.

There are many proposals relating to details of the county jail system, such as jail architecture, sanitation, outdoor work, etc.[34] Among the various sorts of people included among the misdemeanants, the vagrants seem to have received more attention from the "reformers" than any other group.[35] Nearly all of these programs agree in urging the labor colony system already operative in Switzerland and Belgium.

Two more general programs deserve special attention. The committee on corrections of the National Conference of Charities and Correction in 1914 outlined a plan which Amos W. Butler summarized as follows:[36]

1. A system of police recognizing character, merit and efficiency in the personnel and a proper social view for its operations.
2. A prompt hearing for every person arrested.
3. The establishment of juvenile courts for all children's cases.

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[33] Eubank, E. E.: "A Study of Family Desertion." Chicago. 1916. Brandt, Lilian: "Five Hundred and Seventy-four Deserters and Their Families." New York. 1905.

[34] Zimmerman, W. C.: "Modern Jail Architecture." Jour. Crim. Law. 6: 717-723.

Dowling, Oscar: "The Hygiene of Jails, Lock-ups and Police Stations." Jour. Crim. Law. 5: 695-703.

Henderson, Chas. R.: "Outdoor Labor for Convicts." Chicago, 1907.

[35] Actes du Congrés Pénitentiare Internationale de Washington. 1910. 1: 183-207.

Lewis, O. F.: "Vagrancy in the United States." New York. 1907.

Kelly, Edmund: "The Elimination of the Tramp." New York. 1908.

[36] National Conf. of Char. and Corr. 1914: 21-26.

4. Provision for the care and detention of delinquent children outside the jail.
5. A probation system for adults similar to that of juvenile courts.
6. Separate trials for women offenders.
7. A modification of the present system of fines in order not to discriminate against the poor.
8. Classification of prisoners, confinement of individuals apart from each other and absolute sex separation in county jails.
9. The prohibition of the use of the jail for any other purpose than that of detention.
10. The abolition of the fee system.
11. State control of all minor prisons.
12. The establishment of industrial farms for convicted misdemeanants.
13. A form of indeterminate sentence for misdemeanants.
14. Their release on parole under supervision.
15. The abolition of contract labor.

In 1915 at the meeting of the American Prison Association in Oakland the committee on jails, lock-ups and police stations made a rather comprehensive report of which the following is an outline.[37]

I. Methods involving a change in the plan of incarceration
   (*a*) State penal farms
   (*b*) Payments to prisoners in the nature of wages
   (*c*) Revision of sentences
   (*d*) Habitual offender acts
   (*e*) Educational work and mental examination
II. Methods involving conditional liberation under supervision
   (*a*) Adult probation
   (*b*) Parole
   (*c*) Outdoor work for local prisoners
   (*d*) Employment of prisoners without guards, an aspect of the so-called honor system
   (*e*) Restitution
   (*f*) Change in system of commitment for fines
III. Rehabilitation of the offender
   (*a*) Special treatment of special classes
   (*b*) Coöperation with community agencies
   (*c*) Case work
IV. Improvement in the process preliminary to conviction
   (*a*) Psychopathic study
   (*b*) Reforms in legal procedure and police administration
V. Supervision
   (*a*) State supervision and control
   (*b*) Statistics

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[37] American Prison Association. 1915: 363-378.

In view of what seems to be a very definite tendency toward individualization, two features of this last program are worthy of special notice: revision of sentences and case work. As to the former, the report says:

> The principle of systematic revision of sentences on the basis of a more complete knowledge of the criminal and his action subsequent to conviction has been established through the success of the indeterminate sentence acts. A very considerable proportion of prisoners now in penal institutions are serving indeterminate sentences. The indeterminate sentence now applies to persons committed to the New York City workhouse, penitentiary and reformatory, and a general extension of this important principle to the misdemeanant class may be expected.

In regard to case work, it states:

> One of the greatest contributions made to the science of social betterment is the method of case work developed in the charity organization societies. Whatever be the nature of the maladjustment through which the offender is finally committed to prison, the prime need is for some agency to undertake and to see through to the end the process of his rehabilitation. Whether as leader or as coöperator, the penal institution ought definitely to take part in this process.

Apparently we seem justified in concluding that *there are already established better ways of handling misdemeanants than the county jail system.* Moreover, these innovations—some of them are not so very new—seem to indicate *a movement in the direction of making the treatment fit the needs of the individual offender.* Admittedly we are as yet far from thorough-going individualization, but there appears to be a pretty definite tendency toward that as a goal.

CHAPTER III

Inmates of County Jails and Other Misdemeanants

Perhaps it would have been more "logical" to describe first the offenders and then the treatment which is applied. But it has been more convenient to get a clear picture of the county jail system before studying its victims very closely. At any rate that is the way we actually proceeded in working at the problem.

In the previous chapter we were content to accept the popular assumption that everybody knows who the inmates of county jails are. But we cannot go much farther without a pretty exact notion of these folks. The vague generalizations about petty offenders or misdemeanants do not afford an adequate basis for criticizing the correctional system. Just who, then, are the people that get into jail? The following tables begin to define them.

General Classification of Prisoners Received in California County Jails 1914[1]

Charged with misdemeanors:		
Not convicted	9,691	
Convicted	11,017	20,708
Charged with felonies and United States prisoners		8,459
Not charged with any offense		2,405
Total		31,572

Classification of Prisoners in California County Jails at Specified Dates[2]

Date	Totals	Awaiting Trial	Serving Sentence	Sentenc'd and Awaiting Transportation to		All others
				State Prison	Ref'rm School	
Dec. 31, 1914	2,121	808	1,221	60	7	25
June 30, 1915	1,717	596	1,060	29	2	30
Dec. 31, 1914	1,962	754	1,095	85	7	21
June 30, 1916	1,590	551	925	26	4	84
June 30, 1917	1,306	571	676	25	3	31
June 30, 1918	1,560	907	603	19	1	30

[1] A Study in County Jails in California. p. 25.

[2] California State Board of Char. and Corr. 1916: 97. 1918: 100-101.

These figures show that a large proportion of county jail prisoners are people serving sentences under conviction of misdemeanor. Another large group consists of those charged with misdemeanors and awaiting trial. Many of these are never found guilty. The rest of the jail population is made up of (1) persons charged with felonies, (2) convicted of felonies and awaiting transportation to a state prison, (3) wards of the juvenile court awaiting transportation to a "reform school," (4) persons against whom no charge has been preferred, including "lodgers," "drunks" sleeping off the effects of a carousal, "suspects" and insane—a pretty motley crowd.

Because the misdemeanor group is decidedly the largest we shall devote most of our attention to it. First of all, we need to make sure that we know who misdemeanants are. We talk glibly of them as though we are dealing with a well defined type. But are we justified in this naïve assumption?

Perhaps the easiest way to get at this problem is through a legal definition. A misdemeanant is a person who has been found guilty of of a misdemeanor. How simple! But what is a misdemeanor? The Statutes of Illinois state it thus:[3]

> A felony is an offense punishable with death or by imprisonment in the penitentiary.
>
> Every other offense is a misdemeanor.

The Penal Code of California offers a definition that is almost identical.[4]

> A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

These are typical legal definitions, not very satisfactory, perhaps, but about the only thing available. However, we can make these statements more concrete in two ways: (1) we can go through the codes and pick out the offenses listed as misdemeanors, or (2) we can find out what offenses have been committed by people who serve jail sentences. The latter method appears to be more worth our while,

[3] Hurd's Revised Statutes. 1917. Chap. 38, Sec. 277-278.
[4] Deering's Penal Code. 1909. Sec. 17.

for it is likely that many sections of our penal codes are not regularly enforced, and perhaps some are not violated.

In a study in county jails in California in 1915[5] the offenses for which people were sentenced most frequently to county jails were: vagrancy, drunkenness, disturbing the peace and petit larceny. The folllwing table shows the numbers in detail for each of thirty offenses.

OFFENSES OF MISDEMEANANTS IN CALIFORNIA COUNTY JAILS, 1914

Vagrancy	2,893	Embezzlement	34
Disturbing the peace	1,937	Contempt of court	31
Petit larceny	1,498	Fish and game laws	31
Drunk	1,242	Liquor laws	24
Begging	372	Cruelty to animals	24
Beating railroad	371	Gambling	18
Battery	289	Resisting an officer	13
Assault	197	Threat to kill	10
Liquor laws	151	Prostitution	10
Concealed weapons	105	Auto laws	9
Malicious mischief	80	Discharging firearms	8
Defrauding innkeeper	77	Fast driving	5
Failure to provide	74	Lottery	3
Indecent exposure	49	City and county ordinances not specified	52
Passing fictitious check	45	Misdemeanors not specified	1,336
Obtaining money under false pretenses	36		
Total convicted of misdemeanors			11,024

This gives a representative list of the principal offenses included in the general category of misdemeanors.[6] It is suggestive, but does not define our group at all exactly. As we shall see later, misdemeanants are not capable of precise definition in terms of offenses committed. But perhaps we will have better prospects of success, if we seek information about the misdemeanants themselves as human beings. As a matter of fact it is possible to assemble data concerning

[5] A Study in County Jails in California. Bulletin of the State Board of Charities and Corrections. 1916. This study was made by the present author.

[6] For similar lists of offenses see:
New York City Department of Correction. 1915: 65-72.
Kansas City Board of Public Welfare. 1914: 120.
Rhode Island Board of State Charities and Corrections. 1915: 90.
Chicago House of Correction. 1915.
Allegheny County (Pittsburg) Workhouse. 1916: 47.
Journal of Criminal Law. 8: 861.
National Conference of Social Work. 1918: 134.

their age, sex, birthplace, race, marital condition, occupation, previous experience in prison, mental and physical condition. By way of caution, however, we must be on the lookout for possible inaccuracies, and see whether the character of the data and the methods of investigation justify the conclusions which we attempt to draw.

SEX OF MISDEMEANANTS[7]

Institutions	Male	Female	Per cent Female
California County Jails:			
Received in 1914	29,950	1,052	3.4
In jail, 12-31-14	2,071	50	2.4
6-30-15	1,648	69	4.0
California City Jails:			
Received 1914-15	129,650	8,000	5.8
In jail, 6-30-14	463	26	5.3
New York County Penitentiaries:			
Received, 1916-17	15,041	434	2.7
In prison, 6-30-17	2,172	93	4.1
New York County Jails:			
Received, 1916-17	37,573	2,405	6.0
In jail, 6-30-17	1,524	106	6.5

The above table simply means that most of the people found guilty of misdemeanors are men. It does not show the relative "criminality" of men and women, because there is no means of discovering the number of unpunished offenses of either sex. In fact, it is pretty well understood that the police and courts are much more lenient toward women than toward men. In some cases the women are known to the police for some time before the first arrest, and are not committed by the magistrate until they have been arrested a number of times.[8] Furthermore, we should not be unduly impressed with variations in the percentage of women. A single raid by "Vice Crusaders" just before a report is made up will obviously change the proportion of women prisoners for an entire state.

[7] The table which follows is made up from data in the following official reports:
A Study in County Jails in California. 26.
California State Board of Char. and Corr. 1916: 97, 106-115.
New York State Commission of Prisons. 1917: 404, 426-427.

[8] See Journal of Criminal Law, 8: 851, concerning women in Holmesburg (Philadelphia) House of Correction.

It is very probable, however, that there is a decidedly larger proportion of male than of female misdemeanants. This very likely can be explained in terms of a difference in the metabolism of the sexes.[9] But there is little doubt that the number of female offenders is much greater than the number of women arrested and convicted. Moreover, the number is surely large enough to make it impossible to regard misdemeanants as a single type so far as sex is concerned.

AGES OF MISDEMEANANTS[10]
PERCENTAGES OF MISDEMEANANTS IN SEVERAL AGE GROUPS

Age Groups[11]	California County Jails	New York City Workhouses	Rhode Island State Workhouse	Pennsylvania County Jails
20 and under.	13	6	5	12
21-30.....	31	30	30	47
31-40.....	26	29	29	41
41-50.....	17	19	19	..
51 and over...	13	16	16	..
Totals...	100	100	100	100

AGES OF MISDEMEANANTS COMPARED WITH GENERAL POPULATION
PERCENTAGES OF EACH IN SEVERAL AGE GROUPS

Age Groups[11]	California County Jails	General population of California over 15 years of age
20 and under.....	13	11
21-30.....	31	26
31-40.....	26	23
41-50.....	17	18
51 and over.....	13	22
Totals.....	100	100

[9] Thomas, W. I.: "Sex and Society." Chicago. 1907.

[10] Data in this table were taken from the following sources:

A Study in County Jails in California. 28-29 (figures for 1914).

New York City Department of Corrections. 1915: 54-55.

Rhode Island Board of State Charities and Corrections. 1915: 91. (Figures are totals up to and including 1915.)

Pennsylvania Board of Commissioners of the Public Charities. 1915: 110.

[11] For the California County Jails the age groups actually used were: 21 and under, 22-29, 30-39, 40-49, 50 and over. This accounts in part, at least, for the

The most important fact that stands out from these tables is that misdemeanants are pretty well distributed over the various age groups. Of course, there are relatively more misdemeanants among the younger people, but it is perhaps natural that friction with the law should occur more frequently during the active years of life. The

BIRTHPLACE OF MISDEMEANANTS[12]

Number and percentage of misdemeanants and ratio of misdemeanants to the general population born in the same state, other states and foreign countries

Brithplace	County actual number	Jail prisoners per cent	General populati'n per cent	Ratio of prisoners to total of same birthplace in general population
California, 1914				
California	5,251	20	38	0.59
Other states	12,395	46	36	1.28
Foreign countries	9,142	34	25	1.38
Totals	26,788	100	99*	
Chicago House of Correction, 1915				
Illinois	4,533	28	47	0.60
Other states	5,402	33	17	1.94
Foreign countries	6,492	39	36	1.08
Totals	16,427	100	100	
Kansas City Farm, 1913-1914				
Missouri	865	29	43	0.67
Other states	1,703	57	45	1.27
Foreign countries	380	14	10	1.40
Totals	2,948	100	98*	

significant thing is not the decreasing proportion of misdemeanants in the groups above the age of forty. The significant thing is the small amount of that decrease. It is important to note that the distribu-

larger per cent in the first group. The second group, on the other hand, would be larger if the classification were the same as in the other columns.

[12] Data taken from the following sources:
Thirteenth U. S. Census. Population. 1: 712, 727, 728.
A Study in County Jails. 30-31.
Chicago House of Correction. 1915.
Kansas City Board of Public Welfare. 1914: 119.

* The remaining 1% and 2% are unknown.

tion in age groups is not very different for misdemeanants and for the general population. Certainly misdemeanants do not constitute a single type so far as age is concerned.

As in the matter of ages, the first observation we are led to make is that misdemeanants are distributed over all the groups considered. There is complete absence of such uniformity as would justify us in regarding them as a single type. It is interesting that both in California and Chicago the "native sons" were both actually and relatively the smallest group. In Kansas City their absolute number was greater than that of the foreign-born prisoners, but the relative number was smaller. This suggests either that people who move about are more apt to clash with the law or else that the police are more ready to arrest outsiders. Perhaps both are true. But the large number of "native sons" among misdemeanants everywhere makes it impossible to classify them or typify them in terms of migration.

One of the best studies that has been made of the relation of birthplace to petty offenses is the work of Miss Grace Abbott.[13] Her table is presented herewith.

NATIVITY OF MALE PERSONS ARRESTED AND CONVICTED OF MISDEMEANORS IN CHICAGO IN 1913

Nativity	Arrests		Convictions		Per cent distribution of male persons in Chicago, 21 years and over
	Number	Per Cent	Number	Per cent	
American:					
White	50,999	58.5	23,656	59.6	43.1
Colored	4,741	5.4	2,179	5.5	2.6
Foreign	31,416	36.1	13,855	34.9	54.3
Austrians	3,282	3.8	1,492	3.8	11.2
English	1,240	1.4	537	1.3	5.2
French	181	.2	90	.2	.....
Germans	6,942	8.0	2,977	7.5	12.6
Greeks	1,592	1.8	947	2.4	.6
Hollanders	209	.3	115	.3	.7
Irish	2,354	2.7	901	2.3	4.4
Italians	2,972	3.4	1,333	3.4	3.2
Russians	7,519	8.6	3,314	8.3	8.5
Scandinavians	2,857	3.3	1,330	3.3	6.7
Others	2,268	2.6	819	2.1	1.2
Totals	87,156	100.0	36,690	100.0	100.0

[13] Abbott, Grace: "Immigration and Crime." Delinquent. August, 1915. p. 1-8.

From these figures it would seem that some nationalities furnish more than their share of misdemeanants. But before undertaking to draw any far-reaching conclusions we ought to know how long the immigrants had been in this county and the attitude of the police toward the people of different nationalities. Miss Abbott discusses these matters somewhat in the article referred to. What seems particularly worth emphasizing here is that petty offenders are drawn from all elements of the population; more or less, though by no means exactly, in the ratio of their numerical importance.

The California study, which unfortunately did not classify the foreign-born prisoners according to nationality, did, however, state in general terms the length of their residence in the United States. It showed that only 5% had been here less than one year; 18% from one to five years; 16% from five to ten years. The rest of those about whom information could be secured had been in the country more than ten years. This means that for California at least the problem is practically one of Americans.[14]

In the matter of race we have not been able to secure very satisfactory data for different parts of the country. But in California five-sixths of the county jail prisoners were classified as "white." The following table shows the number and proportion of certain groups that would not be counted as white.

SPECIAL NATIONAL AND RACIAL GROUPS IN CALIFORNIA COUNTY JAILS, 1914

Number and Percentage of prisoners and ratio of prisoners to general population of same nationality or race.

Race or Nationality	County Jail Prisoners		Per cent of General population	Ratio of prisoners to general population of same race
	Actual number	Per cent of all prisoners		
Negroes	1,021	3.2	0.9	3.55
Chinese	703	2.2	1.5	1.47
Indians	202	0.6	0.7	0.86
Japanese	168	0.5	1.8	0.28
Mexicans	3,078	9.7	?	?

Thus while the negroes and perhaps the Mexicans contribute more than their share of misdemeanants, they are not typical of the petty

[14] A Study in County Jails in California. pp. 21, 42.

offender group. Taken with the other special racial and national groups they constitute only one-sixth of all the county jail prisoners.

MARITAL STATUS OF MISDEMEANANTS[15]

Marital Status	New York City Workhouses	Chicago House of Correction	Kansas City Farm	Philadelphia Detention Home for Women
Single	11,617	10,089	2,047	759
Married	6,872	6,338	763	216
Widowed	1,627	.....	141	61
Divorced	.....	.....	.....	14
Separated	.....	.....	.....	139
Totals	20,116	16,427	2,951	1,205

These figures show that there is a decided preponderance of single persons among the misdemeanants, but at the same time they make it clear that a program of treatment based upon the assumption of bachelorhood would fail to meet the needs of many. The following table of percentages shows the proportion of married and single prisoners compared with the proportion of married and single persons

MARITAL STATUS OF MISDEMEANANTS COMPARED WITH THE GENERAL POPULATION[16]

City	Percentage of Married Persons		Percentage of Single Persons	
	Mis-demeanants	General population	Mis-demeanants	General population
Chicago	39	55	61	45
Kansas City (male)	26	55	74	43
New York (male)	38	54	62	46
New York (female)	46	53	54	47
Philadelphia (female)	18	55	82	45

[15] The data for this table were taken from the following sources:
New York City Department of Correction. 1915: 74.
Chicago House of Correction. 1915.
Kansas City Board of Public Welfare. 1914: 119.
National Conference of Social Work. 1918: 134 (Philadelphia).

[16] Data taken from the same sources as for previous table; also from Thirteenth U. S. Census. Population. 1: 619, 624, 629, 634.

in the general population. To simplify the statement we have lumped unmarried, widowed, divorced and separated together as "single."

Every institution shows a preponderance, both actual and relative, of single persons. But in every case both the number and the percentage of married offenders is so great that it is not possible to regard misdemeanants as typically free from marital relations.

Occupations of Misdemeanants[17]

Occupational Groups	California County Jails	Chicago House of Correction	New York City Workhouses	Detroit House of Correction
"Laborers"	12,717	5,881	6,742	2,906
Mfg. and Mech	2,901	4,421	3,367	1,626
Domes. and Pers	2,177	3,071	6,834	633
Trade and Trans	2,166	2,598	2,794	798
Agricultural	852	214	39	106
Professional	226	128	219	30
Min. and Fish	641	22	.....	36
Miscellaneous	1,521	92	121	7
Totals	23,138	16,427	20,116	6,142

Percentages of Misdemeanants in Various Occupational Groups

Occupational Groups	California County Jails	Chicago House of Correction	New York City Workhouses	Detroit House of Correction
"Laborers"	55	36	34	48
Mfg. and Mech	13	27	17	26
Domes. and Pers	9	18	34	10
Trade and Trans	9	16	13	13
Agricultural	4	1	0	2
Professional	1	1	1	0
Min. and Fish	3	0	0	1
Miscellaneous	6	1	1	0
Totals	100	100	100	100

[17] Data for this table were taken from the following sources:
A Study in County Jails in California. 22, 46-53.
Chicago House of Correction. Report. 1915.
New York Department of Correction Report. 1915: 57-64.
Detroit House of Correction. Report. 1917: 19.

Warnings given hitherto as to accuracy of the statistics presented must be redoubled here, for classification of the many occupations listed in the several reports has been a most difficult task. In general, the divisions used by the United States Census have been followed. But in several respects this has been impossible. Thus jail registers frequently record a man as an engineer without a hint as to whether he is civil, electrical, mechanical or railroad engineer. Furthermore, the popular designation "common laborers" found in all the reports is not used at all by the Census. Hence it is not possible to compare the distribution of misdemeanants with the general population in the matter of occupation.

There seems, however, to be no doubt as to the fact that from a third to a half of the misdemeanants are unskilled laborers. Perhaps the proportion is even larger. But it is more than likely that the same thing is true of the general population. We must further observe that all the occupational groups are represented among the misdemeanants. Again we fail to find a misdemeanant type. To indicate more clearly the diversity, the separate occupations which appear in the California report are presented.

OCCUPATIONS OF CALIFORNIA MISDEMEANANTS, 1914

Agriculture, Forestry and Animal Husbandry			**Trade and Transportation**		
Farmer	573		*Bookeeper*	81	
Farmhand	117		*Clerk*	320	
Gardner	79		*Merchant*	128	
"Horseman"	42		*Peddler*	114	
"Lumberjack"	41	852	*"R. R. man"*	226	
			Sailor	277	
Professional (unclassified)	226	226	*Salesman*	260	
			Teamster	710	2,116
Domestic and Personal			**Manufacturing and Mechanical**		
Barber	220		*Baker*	78	
Bartender	105		*Blacksmith*	145	
Butcher	105		*Boilermaker*	125	
Cook	802		*Bricklayer*	107	
"Domestic"	220		*Carpenter*	489	
Housewife	310		*Cigarmaker*	35	
Waiter	415	2,177	*Electrician*	104	
			"Engineer"	119	
Mining and Fishing			*Fireman*	98	
Fisherman	58		*Ironworker*	107	
Miner	583	641	*Lineman*	58	
			Mechanic	590	

Miscellaneous			*Painter*	458	
Soldier	168		*Plumber*	185	
Student	137		*Printer*	83	
"*Miscellaneous*"	1216	1,521	*Tailor*	120	2,901

Total, 14,879

The fact and the extent of recidivism are strikingly revealed by the reports of the Allegheny County (Pittsburg) Workhouse and Inebriate Asylum. The figures quoted below are for the year 1915.[18]

RECIDIVISM OF MISDEMEANANTS IN ALLEGHENY COUNTY WORKHOUSE AND INEBRIATE ASYLUM, 1915

Number of Commitment	Number of Prisoners	Number of Commitment	Number of Prisoners
1	88,202	26	175
2	27,439	27	140
3	13,533	28	138
4	8,105	29	125
5	5,523	30	118
6	4,292	31	117
7	3,210	32	96
8	2,322	33	88
9	1,721	34	82
10	1,720	35	80
11	1,037	36	70
12	1,015	37	69
13	753	38	66
14	720	39	61
15	719	40	61
16	513	41	58
17	429	42	50
18	423	43	42
19	384	44	40
20	383	45	35
21	286	46	34
22	243	47	30
23	217	48	28
24	216	49	27
25	216	50 or over	404
Total			165,855

[18] Report for 1915. p. 89.

In other words, 47 per cent of those committed to this county institution were known to be repeaters. Of these repeaters, 65 per cent were known to have served more than one previous sentence; and a considerable number, though not a large percentage, was known to be in for at least the fiftieth time. A similar report for the Rhode Island State Workhouse[19] shows over 50 per cent of misdemeanants to be recidivists. The Chicago House of Correction found in the same year 44 per cent admitting that they had served sentence before.[20] Of 1024 women committed to the Holmesburg (Philadelphia) House of Correction in 1915, 59 per cent were repeaters, and 35 per cent were serving their fourth or more than fourth commitment.[21] Interesting figures are shown for the last institution as to the relation between time of release and recommitment.

TIME BETWEEN RELEASE AND RECOMMITMENT, HOLMESBURG, PA., 1915[21]

Less than 1 week	4	1 to 2 years	39
1 week to 1 month	12	3 to 5 years	26
1 to 3 months	30	Over 5 years	12
4 to 6 months	60		—
7 months to 1 year	47		
	—	Over 1 year	77
Less than 1 year	153		—

Total studied, 230

POLICE RECORD OF W. K., SPRINGFIELD, ILLINOIS, 1913

Date of Arrest	Charge	Sentence	Date of Release	Days Held
May 31	Drunk and disorderly	Fined $3	June 12	13
June 29	Drunk	No prosecution	June 30	2
July 1	Drunk	Fined $25	July 26	26
July 27	Disorderly	No prosecution	July 29	3
July 31	Drunk	No prosecution	Aug. 4	5
Aug. 8	Drunk and disorderly	Fined $10, but sent. susp.	Aug. 12	5
Aug. 21	Violations of conditions of suspended sentence	Fined $10	Sept. 8	19
Sept. 21	Drunk	No prosecution	Sept. 22	2
Oct. 12	Drunk	No prosecution	Oct. 13	2
Nov. 8	Drunk	No prosecution	Nov. 10	3
Nov. 11	Vagrancy	Fined $25	Dec. 31	51
	Total Days held			131

[19] R. I. Board of State Char. and Corr. 1915.

[20] Chicago House of Correction. Report. 1915.

[21] Journal of Criminal Law, 8: 855, 860-861.

The Springfield (Illinois) Survey shows the fact of misdemeanant recidivism in a slightly different manner.[22] Within that one city, in the single year 1913, 548 persons were arrested a total of 1447 times. One was arrested 16 times, two were arrested 10 times each, three were arrested 7 times apiece. Case records of individual repeaters make the situation more vivid.

Such facts as these give us some hints about the people whom we call misdemeanants; they also shed light upon the ineffectiveness of the usual methods of dealing with them.[23]

In the California study, to which frequent reference has been made, an effort was made to discover the length of time persons had been in the community before their clash with the officers of the law. The table on following page is a summary of the results.[24]

The surprising fact derived from this particular part of the study is that although the county jail prisoners were residents of no particular county, only one-fifth had been in the state less than a year before their arrest. Over a third of these misdemeanants had not been in the county where they were arrested more than one month. In certain counties where there is no city jail at the county seat, and where the county's prisoners therefore comprise almost the entire body of misdemeanants, over half had been in the county not to exceed one week. This was true, for example, of San Joaquin, Merced and Monterey counties. It was true of San Luis Obispo where there is a city jail at the county seat. In these four counties 1818 out of 3168 prisoners, or 54 per cent, had come from other parts of the state within a week of their arrest. Yet in these same counties 75 per cent of the same prisoners had been in California over a year, and

[22] Potter, Zenas L.: The Correctional System of Springfield, Illinois. The Springfield Survey. New York. 1915. pp. 5, 20.

[23] Some information as to the recidivism of European petty offenders is given by:

Jacquart, Camille: La Criminalité Belge. Bruxelles. 1909. p. 75-80.

Sutherland, J. F.: Recidivism; Habitual Criminality and Habitual Petty Delinquency. Edinburgh. 1908.

Bonger, W. A.: Criminality and Economic Conditions. Translated by Henry P. Horton. Boston. 1916. p. 523.

American Prison Association. 1910: 455-463.

Journal of Criminal Law. 6: 843, 846.

[24] A Study in County Jails in California. pp. 20-21, 32-39.

MISDEMEANANTS AND THE TRANSIENT POPULATION

Length of Time in County Before Arrest, California, 1914

Time	Number		Per Cent	
1 week or less	6,835		28.7	
1 week to 1 month	2,209		9.3	
1 month or less		9,044		38.0
1 to 6 months	2,670		11.2	
6 months to 1 year	1,705	4,375	7.2	18.4
1 year or less		13,419		56.4
1 to 5 years	3,742		15.7	
Over 5 years	6,644		27.9	
Over 1 year		10,386		43.6
Total known		23,805		100.0

Length of Time in State Before Arrest, California, 1914

Time	Number		Per Cent	
3 months or less	2,489		10.4	
3 to 6 months	853		3.6	
6 months to 1 year	1,810		7.6	
1 year or less		5,152		21.6
1 to 5 years	5,211		21.9	
Over 5 years	13,471		56.5	
Over 1 year		18,682		78.4
Total known		23,834		100.0

52 per cent over 5 years. This shows that so far as residence is concerned the misdemeanants constitute a state rather than a local problem.

There appears to be a popular theory to the effect that criminals possess certain physical stigmata which mark them as criminals. While we have insufficient evidence to say without qualification that this doctrine is false, we can at least demonstrate that such evidence as is available points to a very different conclusion.

In visiting jails and talking with petty offenders we have been impressed, more than anything else, with their great variety. We can testify with certainty that there is no uniformity of stature, weight, eyes, hair, dexterity, alertness or disease. No general physical examinations have been made of misdemeanants, but we do know two things with assurance: (1) many of them are suffering from some disease or other, (2) the nature of their troubles and the medical or surgical care needed are of many different kinds. Light is shed on this subject by the reports of a number of institutions. Thus in the Kansas City Municipal Farm, during the fiscal year 1913–14,[25] 3191 prisoners were received, and there was an average daily population of 263. At the same time there were 679 hospital cases, an average of 14 per day. The report lists "diseases treated" as follows:

Diseases Treated in Kansas City Municipal Farm, 1913–14

Alcoholism, acute and chronic	159	Myocarditis	20
Drug habits	128	Epilepsy	11
Syphilis	32	Scabies	9
Gonorrhoea, with complications	35	Appendicitis	9
Carbuncles, boils, etc	41	Pulmonary tuberculosis	8
Rheumatism	32	Circumcisions	8
Influenza	26	Insanity	8
Wounds, incised, cauterized, etc	21	Pneumonia	5
Chancers, with complications	21	Smallpox	5
Vaccination infected	17	Synavinitis	4
Bubocectomy	16	Entiritis	4
Total	679		

A detailed account of the diseases treated in the hospital of the Chicago House of Correction in 1917 is presented in the report of the institution for that year. Suffice it to say that medical care was given to 4530 prisoners for 111 causes listed in the report, and surgical attention was given to 574 prisoners for 128 listed causes. A detailed statement is not included here because it would be of interest only to the medical profession.

[25] Kansas City Board of Public Welfare. 1914: 98-100.

A study was made in 1917 of 100 women offenders in the Holmesburg (Philadelphia) House of Correction, which made an interesting showing of physical defects.[26]

RESULTS OF PHYSICAL EXAMINATION OF 100 WOMEN MISDEMEANANTS

Total women examined	100		
Total defects found	474		
General medical	78	Drug using	37
Teeth	74	Gynecological	36
Nervous disorder	54	Malnutrition	23
Poor nutrition	53	Tuberculosis	21
Eyes	45	Skin disease	6
Venereal disease	43	Defective hearing	4

These and other reports which might be examined all point to one general conclusion for the layman, viz., that very many misdemeanants are suffering from various diseases, and that they are in need of a good many different sorts of medical and surgical care. That in itself is a matter of no little consequence in understanding these petty offenders. But that is about all that we may say with assurance at the present time.

Dr. William J. Hickson[27] has made the statement "that delinquency and defectives are practically synonymous, the principle forms of defectiveness being dementia praecox, psychopathic constitution and feeblemindedness." But the only conviction we receive from his evidence is that he found what he was looking for. In the first place, he studied a group of offenders chosen because of their suspected defectiveness. Second, he uses a set of concepts about which there is a great deal of debate.[28]

[26] Journal of Criminal Law, 8: 871.

[27] Report of the Psychopathic Laboratory of the Municipal Court of Chicago. 1914-17. p. 149.

[28] See articles in: Mental Hygiene, Journal of Criminal Law, Journal of Delinquency, Journal of Psycho-Asthenics, Training School Bulletin, Zeitschrift für die Erforschung und Behandlung des jugendlichen Schwachsinns auf Wissenschaftlicher Grundlage.

See also:

Healy, Wm.: "The Individual Delinquent." Boston. 1915.

Goddard, H. H.: "Feeblemindedness." New York. 1914.

Barr, M. W.: "Mental Defectives." Philadelphia. 1910.

Birnbaum, Karl: "Die psychopathischen Verbrecher." Berlin. 1914.

It seems that as in the case of physical condition, the available data on mentality do not justify sweeping conclusions. However, some studies have been made which help us to an understanding of our problem. The first table is made up from figures presented by Dr. Victor V. Anderson, one time psychologist for the Boston Municipal Court.

MENTAL ABNORMALITIES DISCOVERED IN BOSTON MUNICIPAL COURT, 1914[29]

Mental Condition	Men		Women	
	Number	Per cent	Number	Per cent
Mental defectives	23	17	86	41
Constitutional psychopaths	49	35	36	17
Subnormal	24	17	47	22
Dementia praecox	7	5	6	3
Epileptics	6	4	7	3
General paresis	5	4	..	..
Cerebral-spinal syphilis	2	1	..	..
Alcoholic halucinosis	1	1	1	..
Psychoasthenia	1	1	..	..
Manic depressive insanity	..	..	3	2
Senile dementia	3	2	3	2
Unclassified psychoses	6	4	5	2
Normal	13	9	13	6
Totals	140	100	210	100

This table might seem to bear out Dr. Hickson's statement were it not known that these also are the results of studying a selected lot of cases. The next table is much fairer. Pintner and Toops examined 132 out of 147 inmates of an Ohio workhouse, with results which are summarized herewith.[30]

[29] American Prison Association. 1914: 392-393.

[30] Pintner, Rudolph, and Toops, Herbert A.: "A Mental Survey of the Population of a Workhouse." Journal of Delinquency, 2: 278-287.

MENTAL RATING OF INMATES OF AN OHIO WORKHOUSE, 1917

Mental Age	No.	Group	No.	Per Cent
—6	11	Feebleminded	38	28.8
6	8			
7	6			
8	13			
9	17	Borderline	39	29.6
10	22			
11	23	Backward	41	31.0
12	18			
13	4	Normal	14	10.6
14	6			
15	2			
16	2			
	Totals		132	100.0

CLASSIFICATION OF INMATES OF AN OHIO WORKHOUSE BY OFFENSE AND MEDIAN MENTAL AGE

Offense	Number	Median Mental Age
Non-support	29	11.3
Loitering	23	11.6
Petit larceny	23	10.0
Assault and battery	10	10.3
Drunkeness	10	9.6
Disturbing peace	9	10.5
Embezzlement and destruction of property	5	10.5
Contributing to delinquency	4	8.0
Adultery, disorderly house	4	8.0
Carrying concealed weapons	4	10.4
Begging	3	8.0
Miscellaneous	5	10.9
Total	132	

Even if we were justified in accepting the figure, 10.6%, as representing the exact number of normal persons in the workhouse studied, this would of itself be sufficient to invalidate Dr. Hickson's generalization. But our position is even stronger, for those classed as backward

and borderline have not been shown to have hereditary defects. Hence we cannot accept the dictum that "delinquency and defectiveness are practically synonymous." In the Ohio study just cited only 28.8% of the prisoners were found to be definitely feebleminded.

From the Chicago House of Correction Murray and Kuh present further data.[31] In the five years, 1912–16, there were in the hospital for treatment 22,404 cases. Among these, 1822 examinations were made by the neurological department. Of the 1822, there were 635 committable cases, 4 cases of paralysis agitans and one of acromegaly. The remaining 1182 cases were hysteria, neurasthenia and chronic alcoholism. In 1916 there were committed from the House of Correction to the Psychopathic Hospital:

Dementia praecox	109	Tabo-paresis	11
General paresis	56	Paranoia	4
Senile dementia	12	Feebleminded	2
Alcoholic psychosis	19	Epileptic psychosis	3
Manic depressive	3	Traumatic psychosis	3
		Juvenile paresis	1
Total			223

It is important to remember that the cases of mental defect or aberration represent here less than 10% of the total who passed through the House of Correction hospital.

Gilliland tested 100 inmates of the Columbus, Ohio, Workhouse by the Yerkes-Bridges Point Scale. Here is a summary of his findings.[32]

Points Passed	Number tested
33–49	6
51–65	27
67–80	37
81–90	19
91–99	11
	100

If 67 out of 100 misdemeanants were found to be above the level of feeblemindedness, it seems hardly fair to describe delinquency and defectiveness as practically synonymous.

In considering these various statements as to the mentality of misdemeanants we need assume no responsibility for their accurate-

[31] Journal of Criminal Law, 8: 839.

[32] Journal of Criminal Law, 7: 857-866.

ness. So far as that goes, we may as well recognize that there is a great variety of opinions as to what constitutes feeblemindedness.[33] But in spite of the fact that the bases of judgment differ, one thing seems apparent from all the reports on mental status. It is that there is a wide range of mental ratings among misdemeanants, and that there is nothing here by which to differentiate them from the rest of the population. This, of course, is not to deny that there may be a considerably greater percentage of dementia praecox or feebleminded-ness or any abnormality. It simply emphasizes the fact that many petty offenders are normal, that the remainder are handicapped by a variety of defects, and that these defects are found among people who are not considered delinquent.

Before leaving this subject it is of interest to see what formal education has been received by some misdemeanants. Pintner and Toops, in the study already referred to, include the following statement.

GRADE AT LEAVING SCHOOL, PRISONERS IN AN OHIO WORKHOUSE[34]

No schooling	11	7th grade	9
1st grade	3	8th grade	20
2nd grade	7	9th grade	5
3rd grade	11	10th grade	1
4th grade	17	11th grade	1
5th grade	16	12th grade	2
6th grade	23		—
Total			126

[33] Dr. Mable Fernald makes the following statement of the percentage of feebleminded among 100 Bedford inmates according to the various standards recommended by different authorities:

Below 12 years by the Binet-Simon Scale, 1911 form (15 year and adult tests used) 88%
Below 12 years by Goddard Revision of Binet-Simon Scale, 1911 form (15 year and adult tests not used) 100%
Below 10 years by the Binet-Simon Scale, 1911 form (15 year and adult tests used) 41%
Below 10 years by the Goddard Revision of the Binet-Simon Scale, 1911 form (15 year and adult tests not used) 34%
Below 75 points by Yerkes-Bridges Point Scale 65%
Having a coefficient of mental ability of 0.75 or less by the Yerkes-Bridges Point Scale, standard suggested by Dr. Haines 38%
Having a mental quotient of less than 0.75 or a mental age of less than 12 years by the Stanford Revision, standard used by Dr. Terman 65%

Fernald, Mable R.: "Practical Applications of Psychology to the Problems of a Clearing-House." Journal of Criminal Law, 7: 722-731.

[34] Journal of Delinquency, 2: 284.

Now if we are going to include among hereditary defectives people able, in spite of handicaps, to complete the grammar grades, we shall have to revise our concept of mental defect. Out of these 126 prisoners, 29 completed the eighth grade. But it is probably unfair to count most of those who finished the sixth grade as defective. If we draw our imaginary line at that point, we find 61 or practically one-half on the side which at least deserves the benefit of the doubt.

A study by Miss Bryant at the Holmesburg (Philadelphia) House of Correction shows the following facts.[35]

SCHOOLING OF 100 WOMEN, HOLMESBURG HOUSE OF CORRECTION

None	26	6th grade	5
1st grade	1	7th grade	5
2nd grade	3	8th grade	23
3rd grade	5	High school	5
4th grade	9	Special	1
5th grade	5	Unknown	12

Mrs. Jane D. Rippin presented to the National Conference of Social Work in 1918 similar data concerning 1205 women and girls who had been cared for in the Philadelphia Detention Home for Women.[36]

In Mrs. Solenberger's study of chronic beggars[37] she found that "there were eight college men among the 135, and 103 who had a common school education; 21 were illiterate and the amount of education of three was unknown . . . "

Consider for a moment some simple facts about the general population.[38] In 1910 the illiterates of the United States included 7.7% of all the people over 10 years of age. The study of a ten year period in Cleveland indicates that only 25% of the children enrolled in the first grade reached the eighth. Thorndike's computation in regard to elimination[39] estimated that out of 100 children entering school,

[35] Journal of Criminal Law, 8: 877.

[36] National Conference of Social Work. 1918: 135.

[37] Solenberger, Alice Willard: "One Thousand Homeless Men." New York. 1911. p. 165.

[38] Mangold, Geo. B.: "Problems of Child Welfare." New York. 1914. pp. 228 ff.

[39] Thorndike, E.: "Elimination of Pupils from School." U. S. Bureau of Education. Bulletin. 1907. No. 4.

SCHOOLING OF 1,205 INMATES, PHILADELPHIA DETENTION HOME FOR WOMEN

Grade at leaving school		Age at leaving school	
No schooling	31	No schooling	31
Ungraded	7	8 years	2
1st grade	14	9 years	5
2nd grade	17	10 years	17
3rd grade	56	11 years	28
4th grade	112	12 years	54
5th grade	133	13 years	106
6th grade	215	14 years	430
7th grade	125	15 years	186
8th grade	224	16 years	143
High school or technical	65	17 years	40
		18 years	23
College	4	19 years	7
Unknown	202	20 years	3
		Still attends	1
Total	1,205	Unknown	129
		Total	1,205

68 remain to the sixth grade and 27 enter high school. These figures correspond rather closely with those from some of the groups of misdemeanants studied. Perhaps the simplest way to present the matter will be to compare the percentage of prisoners who reached given grades with the corresponding figures from Thorndike's computation.

GRADE REACHED IN SCHOOL BY 1,363 MISDEMEANANTS COMPARED WITH THORNDIKE'S COMPUTATION

Grade reached	Percentage of misdemeanants who entered school	Estimated percentage of all children entering school
6th	54	68
7th	36	54
8th	25	40
High school	6	27

This shows an average educational handicap. But the relative amount of that handicap must surprise those who, like Dr. Hickson, seem to regard all delinquents as defectives. These data serve still further to emphasize and illustrate the fact that the conditions and needs of misdemeanants are by no means uniform. Among them we find imbeciles and superior individuals, illiterates and college

graduates. Admittedly our evidence is not exhaustive, but it should be sufficient to make us very wary of efforts to describe a misdeneanant type.

So far we have dealt with general information for the most part statistical in form. A much better understanding of the human beings involved may be had from case studies. Fortunately such studies are available. Dr. Baker, psychiatrist at the Westchester County Penitentiary, New York, has reported the results of his work with 50 vagrants. We take the liberty of quoting two of his cases.[40]

Case No. 1. A man who was sent to the penitentiary for 90 days. He is 36 years old; was born in this country; he has no permanent home and does not know the address of any relative. All the information he could give about his family was that his father worked in a coal yard, and that when the inmate was ten years old his father placed him in a home along with his brothers and sisters. He remained in the home for seven or eight years. He found school work too difficult, so spent most of the time in the institution "cleaning around." He cannot read or write. After leaving the home he worked on farms for a time, earning $4 or $5 a month. Once he worked for a policeman, caring for horses at $3 or $4 a week. He has spent most of his time about the city dump, hunting for pieces of metal which he sells to junk dealers. When he has money he lives in cheap lodging houses. He has no friends or associates and spends most of his leisure time sitting in a chair in a lodging house. He has served eight or ten sentences for vagrancy in the penitentiary on Blackwell's Island. He is inferior in his general appearance and has a marked speech defect—stammering. He has very little grasp on matters of general interest, and intelligence tests reveal that his mental age is eight years. Clearly a case of feeblemindedness. He was happy and contented in the penitentiary and was faithful at his work, which consisted in cleaning and mopping rooms and corridors.

Here is a man who has been convicted repeatedly for vagrancy. He is physically inferior, stammers and is definitely feebleminded. It is little wonder that he cannot get along in competition with more able men. See how different is the next case.

Case No. 5. Forty-two years of age. His family history is not otherwise significant than that a sister died of pulmonary tuberculosis. He attended school for several years. He was interested in his school work and progressed with average ability. He converses with fair intelligence on matters of current interest and retains his school knowledge fairly well. He worked steadily and in a shoe factory until about twelve or fourteen years ago. At that time he was led to give up his job in the shoe factory and come to New York City, expecting to make more money

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[40] Baker, Amos T.: "Vagrancy." Mental Hygiene, 2: 595-604.

as an employee of the street railway company. He worked for a few months at three or four different jobs, but did not seem to be able to hold any of them. He then became ill and was laid up in a hospital for several weeks with typhoid fever. After he recovered he returned home and remained on the farm for a few months. When he felt stronger he went to work as an assistant boss in a livery stable. Then he returned to the shoe factory but was not able to hold his job for longer than five months; he does not know why, except that he felt weak and sick. Following this he remained in the shoe factory town but did not do any work for a year. He then went to New York City again expecting to go to work, but he spent another year in idleness living on money that he had saved up in former years. When his money gave out he applied at a police station for lodging and was sentenced to a penitentiary for vagrancy. Since his release from the first penitentiary, he has walked about the country. Sometimes he works on farms, but says that he never seems able to collect the full amount of his wages. He does not correspond with his family. He has served a number of terms in penitentiaries for vagrancy.

This man is, like the preceding case, a vagrant recidivist. But how different in other respects! He has been to school, made average progress, learned a trade and acquired a fund of information on matters of current interest. Perhaps he is suffering from some nervous disorder, but clearly he is not feebleminded.

Mrs. Solenberger's study of one thousand homeless men includes a good many who were tramps and beggars, though not under arrest at the time she was interesting herself in them. Two of her cases are quoted here.[41]

. . . One case may be interesting to cite, that of a Norwegian by birth, who has since died in an eastern penitentiary. We have since found upon investigation that this man, who was asking aid in Chicago in 1903-4, had a criminal record in this country and Europe which included among other offenses: bigamy, securing money from women under promises of marriage, defrauding a life insurance company, swindling several hotels and a lodge, receiving money under false pretenses, robbery, burglary, attempting to dispose of a body of a dead infant, perjury when acting as a witness, and blackmail. His career was a long, continuous chain of crimes for several of which he had served terms in American and European prisons. But the significant thing about this man's history was that during all the years in which he was securing large sums of money by the methods referred to, he was at the same time constantly adding smaller amounts to his income by clever begging. His favorite method was to represent himself as almost starving in a strange city and to implore money for transportation to his family and to certain employment in some other city. He was frail and delicate in appearance and in spite of his true character he preserved to the end of his career an innocent and almost boyish expression which served him well in his "profession."

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[41] *Op. cit.* pp. 169-170, 181-182.

Here we have a beggar "working the game" of the starving man in a strange city and needing money to reach his family and a job far away. In addition to begging he also has a record of bigamy, fraud, perjury, blackmail and numerous other crimes. How he started on this career we are not told, but certainly it was not through lack of native ability. Note the complete unlikeness to the next case.

The second story is that of a boy, also born in a large city, who when his home was for some reason broken up, was placed in an immense institution for children. He remained there for a long period during which he received little or no individual training. Shortly after he left the institution this lad met with an accident through which he lost one leg. We endeavored to help him by securing an artificial leg. His record in the interval between his dismissal from the orphanage and his accident was not unfavorable to him and we hoped by prompt assistance and friendly supervision to save the boy from becoming a vagrant. It was not until after he had sold the leg and gone to begging again that we learned what perhaps we should have discovered earlier—that he was too undeveloped mentally, too lacking in the habit of independent thought and action because of the long years he had spent under direction, to be able to care for himself even when given an amount of assistance which would have been sufficient to rehabilitate the average man who is not immoral. He did not beg because of his lameness—with the artificial leg he had learned to walk without a limp—nor did he deliberately choose to be dependent upon others. His mental incapacity to grapple with the problem of his own support alone seemed to account for his choice of the line of least resistance.

Here is another beggar. His immediate classification before the law would be the same as that of the preceding case. But instead of the clever crook, we have here a lad lacking in iniative, probably because of the long period spent in an orphanage. His charactertistics are entirely different, yet his offense is the same.

Prostitutes are for the most part handled as misdemeanants. The cases cited below suggest some of the many factors which may enter into their delinquency. The first is reported by Dr. Anne T. Bingham, physician and mental examiner for the New York Probation and Protective Association.[42]

Ida J. was brought to Waverly House by a detective as a missing person. Age 16 years, 5 months. Born in New York. Father born in Germany; mother in Ireland. The latter died of tuberculosis eleven years ago and the father, aged 49, is in an advanced stage of the same disease. He is intelligent, well educated, of good habits. He has been strict with his children, has a quick temper and is capable of bitterness, which qualities, doubtless, make him hard to live with. . . .

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[42] Journal of Criminal Law, 7: 874-5.

Most of Ida's life to the age of 12 was spent in Roman Catholic institutions. When she came out she was wild and much preferred playing rough street games with her brothers to helping with household tasks. She graduated from grammar school, was promoted in all grades and attended high school for two months. She found the confinement of school very irksome and was glad to leave. She worked for two months in a day nursery but was not satisfactory. When 15 she was seduced under promise of marriage. There was a quarrel and after a month her lover left her to marry a girl whom he had previously ruined. This experience added to Ida's bitterness. She continued to chafe against home restrictions and early in the winter of 1916, following a quarrel she ran away from home, going to live with a girl known to her to be a prostitute, who agreed to give her the instruction necessary to start her in a similar career. After three weeks of street life, when she sometimes earned $25 a night, she decided to go back to her home. There she was met by blows from her father and taunts from her sister which so angered her that she recklessly returned to prostitution. . . . The summary of the mental examination notes that Ida's habits have been so well established that she should be able to cope satisfactorily with the ordinary demands of life. . . Repression is such a prominent characteristic that it is reasonable to hold this trait responsible in a high degree for the girl's perverted emotional outlets.

Here apparently is a product of repression. She is evidently not defective, but the restrictions imposed by a quick-tempered father, followed by the routine of an institution laid the foundation for abnormal expression of perfectly normal impulses. Without recourse to cases of mental abnormality, we can find very different factors in the same overt offense. The following instance is taken from the report of the Chicago Vice Commission.[43]

An inmate of a house of prostitution at — Dearborn Street by the name of Paulette said she was 22 years of age, but she looks much younger. She formerly had lived in ———, Massachusetts, where she married at 17. After living with her husband two years, they had a misunderstanding and parted. She first came to Chicago to work in one of the department stores downtown in the shirtwaist department, and received $7.00 a week. This sum was afterward reduced to $6.00. "I could not live on that," she said, "so I took up the sporting life because it appealed to me. It was impossible to make a living where I was. And even when I was in the store I made money on the side." . . . "While in the store," she continued, "I heard of a case of a good girl getting $6.00 a week. She asked for more money. She said she couldn't live on that. The man said, 'Can't you get somebody to keep you?' "

Perhaps the economic factors in this case of prostitution might be described as a form of repression. In that event the two cases cited could be considered alike. But the previous experiences of the

[43] The Social Evil in Chicago. Chicago. 1911. p. 212.

two girls had evidently been quite different, and it seems plain that reformative treatment must be different for each of them.

Family desertion is a misdemeanor in 33 states.[44] The following case is taken from Miss Brandt's investigations.[45]

It was a Philadelphia family. The man had been an inveterate loafer from boyhood, had stolen money from his employer and was a gambler and a hard drinker. He was a plumber and could earn from ten to twelve dollars a week, but he never worked. "Possibly," suggested the agent, "his parents were too easy on him when he was a boy, just as his wife was later. The rest of his family are all respectable people."

There were seven children and he had deserted before the birth of each one, as well as at other times when there was sickness. Relatives and churches had practically supported the family for eighteen years. The wife had several times taken her husband into court on the charge of non-support, but he was always given "another chance." The woman, herself, was a hard worker and an "unusually good" mother. She could not earn more than four or five dollars a week at best and the only boy of working age not more than three.

When the Society for Organizing Charity undertook to direct the family affairs the man was under orders from the court to pay three dollars a week but he was doing nothing. . . .

The woman was persuaded to have her husband brought into court for non-payment of order. This resulted in a ninety days' sentence for contempt of court.

This family deserter is described as an habitual loafer, a gambler, drunkard and thief. He had a good trade, but did not work enough to support his family. But not all deserters are of this type. One of a very different sort is described by Eubank.[46]

The domestic situation in Henry Slokowski's home might well have tried the patience of any man. When he married Anna she was a rather attractive girl, pretty in a cheap way, and apparently as well endowed for the duties of married life as any of the other girls in the Polish community where they lived. It did not take many days of wedlock, however, to reveal that a ready wit which had been one of her charms in her lover's eyes, might, under certain circumstances, add venom to a shrewish tongue. Her easy flow of conversation when it found expression in a deluge of scoldings and abuse was often hard to bear. Henry was a good worker and found no difficulty in keeping employed at wages ranging from sixteen to thirty-two dollars a week; but Anna was unthrifty and the contents of the pay envelope, which he faithfully turned over to her every Saturday night, ran through her fingers with

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[44] Eubank, E. E.: "A Study in Family Desertion." Chicago. 1916. p. 59.

[45] Brandt, Lillian: "Five Hundred and Seventy-Four Deserters and Their Families." New York. 1905. pp. 52-54.

[46] *Op. cit.* pp. 47-48

little to show for it. A slovenly, ill-kept house made a proper frame for a slatternly wife. When the children began to come they fitted into the picture, their unwashed little bodies and dirty clothing matching hers. Every night coming home from work to a half-prepared meal and a disorderly household, Henry faced a volley of abuse because he did not earn more than he did.

Henry patiently endured all this for ten long years. He drank a little occasionally, but not to excess. The social conversation of the Polish saloon where he dropped in for a glass of beer perhaps twice a week, was practically his only recreation or diversion. Even this was made the subject of bitter abuse by his wife. In and out of his hearing she did not fail to inform those who would listen of how lazy he was that he did not earn more, and of how he wasted that little in saloons and beer halls while his neglected family bore the penalty.

Possibly Henry would have gone on to the end in this humble henpecked existence had not Martin Pribiloff appeared on the scene. He came into the home as a boarder; he remained as Anna's lover. Obviously Henry was in the way, so, as meekly as he had been a husband, he became a deserter.

Here is a man guilty before the law of the identical offense of family desertion. But instead of being himself an idler, drunkard, gambler and thief, he has been for ten years the patient husband of an extravagant, abusive, slatternly and unfaithful wife. It is clear that the offense, the overt act, is a very inadequate basis for classifying offenders. These eight case histories are suggestive of the many different factors that may enter into the delinquency of persons technically guilty of the same crime.

In conclusion—the evidence presented in this chapter seems to show pretty clearly that *misdemeanants do not constitute a well-defined type.* Even granting that such a distinct human type could be established—which we do not grant—it will certainly have to be based on some aspect of their lives other than those concerning which we have data.

What different acts have made people misdemeanants! For one it may be drunkenness, for another fishing out of season. One may have stolen a hen, another "skipped" his board bill.

Most of the misdemeanants are men, but the number of women is much too great to be ignored.

A large proportion is under thirty years of age, but a surprising number is over fifty.

Most petty offenders are American-born, but the various foreign groups contribute percentages which approximate their relative importance.

The negroes seem to commit an undue share of misdemeanors, but the great majority of petty offenders in most states is white.

There is an excessive proportion of single persons, but on the other hand there are very many who acknowledge marital relations.

Unskilled laborers represent a large fraction of the misdemeanants, but there are representatives of nearly all occupations, probably in about the same ratio as in the general population.

Perhaps half are "repeaters," but there is a constant stream of new recruits.

Very many belong to the transient population, but almost as many are "old residents."

Physical defects seem to be about the same as may be found among non-delinquents. They are so varied as to leave no distinct impression. So far as the evidence shows, they are no more numerous than in the general population.

Native ability, intelligence and education all seem to average less than in the non-criminal population. But the misdemeanants include all grades of mentality from imbeciles to superior individuals, from illiterates to college graduates.

Individual differences and a *common humanity* overshadow the evidence which may seem to support the theory of a misdemeanant type.

CHAPTER IV

Misdemeanants and Felons an Outgrown Classification

Classification of offenders and the definition of "criminal types" have until quite recently occupied a large share of the criminologists' attention. In the early days of criminology it was perhaps natural that efforts to organize information about delinquents should take the form of pigeon-holing.[1] For purposes both of explanation and of treatment it appears to have been regarded as sufficient to group criminals with reference to a single common characteristic. But it was inevitable that out of the manifold classifications and the increasing attention to offenders rather than to their acts a new view should arise. Individualization has established its place in the juvenile court,[2] and through the new Sing Sing[3] is assuming prominence in the care of adult felons. But up to the present this idea has scarcely been applied to misdemeanants.[4] Doubtless this results in part at least from a policy of one thing at a time. But it is undeniable that hitherto much more attention has been given to felons than to the so-called petty offenders. Moreover, it is likely that such neglect may be traced, among other causes, to the maintenance of this traditional classification.

[1] A number of such classifications, including those of Lombroso, Ferri, Havelock Ellis and Garofalo, are discussed by Parmelee in his "Criminology" (New York, 1918). It is curious that in criticising them he fails to take a cue from clinical studies such as those to which reference was made in the preceding chapter. Instead of pointing out the failure of the earlier classifications to stress the complexity of causal factors in each individual instance, he glibly passes on to propose one more set of categories, as formal and superficial as those he criticises. (See page 198 of his book.)

[2] Healy, Wm.: "The Individual Delinquent." Boston. 1915.

Bridgeman, Olga: "An Experimental Study of Abnormal Children." Berkeley, Cal. 1918.

Journal of Criminal Law and Criminology. Chicago. 1910—.

Journal of Delinquency. Whittier, Cal. 1916—.

[3] Glueck, Bernard, in Mental Hygiene, 2: 85-139. 1918.

The Prison and the Prisoner. A Symposium. Edited by Julia K. Jaffray. Boston. 1917.

[4] See chapters I and II.

It seems a bit strange that while engaged in overthrowing various theoretical classifications of crime and criminals most writers[5] should overlook the traditional, and possibly even more obsolete and confusing legal classification, viz., into misdemeanants and felons. In order that there may be no uncertainty as to the fact and nature of this classification, let us turn to the codes of two representative states. The Illinois law reads as follows:

> Chap. 38. Sec. 277. A felony is an offense punishable with death or by imprisonment in the penitentiary.
>
> Sec. 278. Every other offense is a misdemeanor.[6]

The definitions of the California Penal Code are almost identical.

> Sec. 17. A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the state prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.[7]

Obviously this is primarily a classification of penalties and offenses, but it involves a corresponding division of offenders. If we had here merely categories for arranging lists of proscribed acts, this distinction would be relatively harmless. But correlated with it, and possibly resulting from it are several difficulties. First, as already suggested, misdemeanants are not getting the benefit of a good many innovations in correctional methods. It should be clear from the evidence already presented that, as contrasted with state prisons, county jails are less sanitary, provide less segregation, less occupation and less education. Repression rather than rehabilitation is their principle and practise. Second, inasmuch as county care is more and more admitted to be inherently ill-adapted to the needs of petty offenders, state systems will probably displace it. But this would mean two sets of institutions for adult delinquents, unless the distinction between felons and misdemeanants be abandoned. To be sure,

[5] Notable exceptions are:

Stephen, Sir James Fitzjames: "A History of the Criminal Law of England." London. 1883.

Train, Arthur: "The Prisoner at the Bar." New York. 1915.

[6] Hurd's Revised Statutes of Illinois. 1917.

[7] Deering's Penal Code of California. 1909.

such a hoary tradition should not be lightly cast aside. But unless it is of some definite, practical value today, it may well be dropped from our penal codes. Moreover, if it can be shown that its present usefulness is negligible, and that it is really ill-defined and confusing, then we should the more readily eliminate it from our thinking and practise. That it is ill-defined and confusing, that it is a handicap to prison reform and that whatever usefulness it may have had is long since outlived seem to be the necessary conclusions from the data which follow.

The Classification of Offenders as Misdemeanants and Felons Grew Out of an Historical Situation Which No Longer Exists

If one could view the present legal classification of offenders as felons and misdemeanants in innocent ignorance of the tradition which gives it life, he would doubtless regard the division as very queer. But knowing that laws, unlike Athene, do not spring full grown from Zeus's brow, he would seek for the origin of this, which in the light of present conditions alone seems illogical and anomalous. No one has described the history of these concepts—misdemeanor and felony—more clearly than Sir James Fitzjames Stephen, once Judge of the High Court of Justice, Queen's Bench Division.[8] Hence, although his book is old, we venture to quote from it at some length.

> The classification of crimes, as felony and misdemeanor, is very ancient. The word "felonia," indeed, appears in Glanville, and is commonly used in Bracton. . . . I do not, however, remember in Bracton any express classification of offenses as being either felonies or misdemeanors. In later times the sense of the word came to be definitely fixed, though it is not easy to give any exact definition of it. It is usually said that felony means a crime which involved the punishment of forfeiture, but this definition would be too large, for it would include misprision of treason which is a misdemeanor. On the other hand, if felony is defined as a crime punishable with death, it excludes petty larceny which was never capital, and includes piracy which was never felony. Felony was substantially the name for the more heinous crimes, and all felonies were punishable by death, with two exceptions, namely, petty larceny and mayhem, which came by degrees to be treated as a misdemeanor. If a crime was made felony by statute, the use of the name implied the punishment of death, subject, however, to the rules already stated as to benefit of clergy. Thus, broadly speaking, felony may be defined as the name appropriated to crimes punishable by death, misdemeanor being a name for all minor offenses. There were, and, indeed, still are a good many differences of considerable importance in the procedure

[8] Stephen, Sir James Fitzjames: *op. cit.*, especially 2: 192-196.

relating to the prosecution of felonies and misdemeanors respectively. The most important are, that as a rule a person cannot be arrested for misdemeanor without a warrant; that a person committed for trial for a misdemeanor is entitled to be bailed (speaking generally), whereas a person accused of felony is not; and that on a trial for felony the prisoner is entitled to twenty peremptory challenges, whereas upon a trial for misdemeanor he is entitled to none.

So long as the punishment of death and the law relating to benefit of clergy were in force, the distinction between felony and misdemeanor was not only an important but might also be described as an essential part of the law, but since the substitution of milder punishments for death, the distinction has become unmeaning and a source of confusion, especially as many offenses have been made misdemeanors by statutes, which render the offender liable to punishments as severe as those which are now usually inflicted upon persons convicted of felony. It is impossible to suggest any reason why the offense of embezzlement should be a felony, and the offense of fraud by an agent or bailee a misdemeanor, or why bigamy should be a felony and perjury a misdemeanor, or why certain kinds of forgery should be felonies, and obtaining goods by false pretenses a misdemeanor. . . .

Upon the whole it may be said that no classification of crime exists in our law except one, which has become antiquated and unmeaning.

Sir Stephen then goes on to present from a purely legal point of view his arguments not only for abolishing this particular classification, but for doing without any classification whatsoever. Without claiming that he has described just exactly what happened in the development of the traditional categories, we are probably well within the facts when we say that his statement is essentially correct. The account of other historians[9] at least do not appear to conflict. Consequently the conclusion may be drawn that the classification of offenders as misdemeanants and felons grew out of an historical situation which no longer exists; that reasons which account for its origin are not sufficient to justify its continuance. Our problem then becomes that of seeking to discover if there is a present service to be performed, a function to be fulfilled by this classification. If not, is it a harmless vestige of the past, or are there convincing arguments for its elimination?

[9] Holdsworth, W. S.: "A History of English Law." London. 1909.

Pollock, Sir Frederick, and Maitland, Frederic Wm.: "The History of the English Law before the Time of Edward I." Cambridge. 1911.

Pike, Luke Owen: "A History of Crime in England." London. 1873.

Kocourek, Albert, and Wigmore, John H.: "Formative Influences of Legal Development." Boston. 1918.

Offenses Which Are Sometimes Misdemeanors, Sometimes Felonies

The dubious position and the confusing nature of our legal classification are indicated by the fact that what is a misdemeanor in one state may be a felony in another. This is no new discovery. Nearly thirty years ago Dr. F. H. Wines called attention to some startling discrepancies between the laws of different states regarding certain offenses.[10] This statement he repeated and brought up to date in 1910.[11] Taking a cue from Wines, Powers made a similar study[12] in 1918. Neither Wines nor Powers was concerned with the classification of offenses. Therefore it has been necessary to revise their data in order to present it with reference to the proposition that from state to state there is no agreement as to what offenses are misdemeanors and what ones felonies. Powers has prepared tables showing the penalties for 110 different offenses under the laws in effect in 1918 in eleven states. He selected four northern states, four western and three southern states. They are: Illinois, Massachusetts, New York, Wisconsin, Arizona, Nevada, New Mexico, Oregon, Alabama, Georgia, Louisiana. Within this group of only eleven states in a single year one third of the offenses studied represent a sort of borderland between misdemeanors and felonies. More exactly, 39 out of 110 offenses were punished in some states as misdemeanors, in other states as felonies. If a larger number of states or a wider range of time had been considered, the number of doubtful cases would almost certainly have increased. However, the investigation has been sufficiently extended to demonstrate pretty conclusively that there is nothing inherent in an offense which makes it a misdemeanor or a felony.[13]

[10] Eleventh United States Census. Vol. 3. "Crime, Pauperism and Benevolence." 1890.

[11] Correction and Prevention. Vol. 1. "Prison Reform and Criminal Law in the United States." Chap. 4. "Possible and Actual Penalties for Crime." New York. 1910.

[12] Powers, J. Orin: "A Comparative Study of the Penal Codes of Representative States in the American Union." Unpublished Thesis. University of Illinois. 1918.

[13] The original sources of the data which follow are:

Massachusetts Revised Laws. 1902. Supplement 1902-1908. Massachusetts Session Laws. 1909-1917.

New York Penal Code and Code of Criminal Procedure. Annotated by John T. Cook. Albany. 1917.

OFFENSES MISDEMEANORS IN SOME STATES, FELONIES IN OTHERS

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
Arson of fences:					
Arizona	Misdemeanor	.....	6 mo.	.....	$ 300
Illinois	Felony	1 yr.	6 yr.	.....	.....
Georgia	Felony	1 yr.	20 yr.	.....	.....
Arson of woods, grain, etc.					
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Arizona	Misdemeanor	.....	6 mo.	.....	300
Alabama	Felony	2 yr.	10 yr.	.....	.....
Illinois	Felony	1 yr.	6 yr.	$5	100
Embezzlement					
Alabama	Misdemeanor	6 mo.	6 mo.	Twice amt. taken	
Massachusetts	Felony	.....	Life	.....	2,000
Illinois	Felony	.....	10 yr.	.....	.....
Stealing horse, cattle or hog:					
Wisconsin	Misdemeanor	10 da.	1 yr.	5	100
Illinois	Felony	3 yr.	20 yr.	.....	.....
Arizona	Felony	1 yr.	10 yr.	.....	.....
Extortion:					
Nex Mexico	Misdemeanor	.....	30 da.	.....	250
Alabama	Misdemeanor	.....	6 mo.	20	500
Illinois	Felony	1 yr.	20 yr.	.....	5,000
Massachusetts	Felony	.....	15 yr.	.....	5,000

Wisconsin Statutes. 1913. Lyman J. Nash, Revisor. Laws of Wisconsin, 1915.

Arizona Revised Statutes. Penal Code. 1913. Samuel L. Pattee, Code Commissioner. Arizona Session Laws. 1915, 1916.

Nevada Revised Laws. 1912. Nevada Statutes. 1913, 1915, 1917.

New Mexico Statutes Annotated. 1915 Session. Laws as an Appendix. New Mexico Laws of 1917.

Oregon. Lord's Oregon Laws, Annotated. 1910. Oregon General Laws. 1911, 1913, 1915, 1917.

Alabama Code. Adopted 1907. James J. Mayfield, Code Commissioner. Alabama General Laws. 1909, 1911, 1913, 1915, 1917.

Georgia. Park's Annotated Code. 1914. Georgia Laws. 1916.

Louisiana. Annotated Revision of the Statutes through the session of 1915. Robt. M. Marr. Louisiana Acts of 1916.

Illinois. Hurd's Revised Statutes. 1917.

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
Blackmail:					
Illinois	Misdemeanor	.....	6 mo.	.....	500
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Massachusetts	Felony	.....	Life	.....	.....
New York	Felony	.....	15 yr.	.....	.....
Gambling					
Illinois	Misdemeanor	30 da.	60 da.	.....	.....
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
New York	Felony	.....	2 yr.	.....	1,000
Nevada	Felony	1 yr.	5 yr.	.....	.....
Drawing weapon:					
Louisiana	Misdemeanor	10 da.	30 da.	.....	50
Oregon	Misdemeanor	10 da.	6 mo.	10	500
New York	Felony	.....	7 yr.	.....	1,000
Assault:					
Louisiana	Misdemeanor	10 da.	60 da.	5	100
Arizona	Misdemeanor	.....	3 mo.	.....	300
Massachusetts	Felony	.....	3 yr.	.....	1,000
Wisconsin	Felony	1 yr.	8 yr.	.....	.....
False imprisonment:					
Louisiana	Misdemeanor	10 da.	60 da.	10	300
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Arizona	Felony	1 yr.	10 yr.	.....	.....
Abandonment of child:					
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Illinois	Felony	.....	3 yr.	300	1,000
New York	Felony	.....	7 yr.	.....	.....
Abandonment of wife:					
Illinois	Misdemeanor	1 mo.	1 yr.	100	500
Alabama	Misdemeanor	.....	1 yr.	.....	100
Arizona	Felony	.....	5 yr.	.....	.....
Wisconsin	Felony	.....	2 yr.	.....	500
Criminal libel					
Alabama	Misdemeanor	.....	6 mo.	.....	500
Illinois	Misdemeanor	.....	1 yr.	.....	500
Nevada	Felony	.....	5 yr.	.....	5,000
New Mexico	Felony	.....	2 yr.	200	2,000
Blacklisting:					
Alabama	Misdemeanor	.....	60 da.	50	500
Oregon	Misdemeanor	30 da.	90 da.	50	250
Arizona	Felony	1 yr.	5 yr.	1,000 and up	
Illinois	Felony	.....	5 yr.	.....	2,000

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
Lewdness with a child:					
Nevada	Misdemeanor	6 mo.	1 yr.	500	1,000
Wisconsin	Misdemeanor	.....	6 mo.	.....	200
	Felony	1 yr.	2 yr.	.....	.....
New Mexico	Felony	Life			
Louisiana	Felony	Death			
Enticing a female:					
New Mexico	Misdemeanor	8 mo.	1 yr.	80	100
Alabama	Misdemeanor	6 mo.	up	50	500
New York	Felony	2 yr.	20 yr.	.....	5,000
Illinois	Felony	1 yr.	10 yr.	.....	.....
Procuring inmate for house of prostitution:					
Wisconsin	Misdemeanor	6 mo.	1 yr.	.....	.....
Alabama	Misdemeanor	6 mo.	up	50	500
Oregon	Felony	1 yr.	20 yr.	.....	.....
New York	Felony	2 yr.	20 yr.	.....	.....
Keeping disorderly house:					
Oregon	Misdemeanor	30 da.	1 yr.	100	500
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Massachusetts	Felony	.....	2 yr.	.....	.....
Wisconsin	Felony	1 yr.	3 yr.	.....	.....
	Misdemeanor	6 mo.	1 yr.	200	500
Allowing minor in house of prostitution:					
Nevada	Misdemeanor	.....	6 mo.	.....	500
Oregon	Misdemeanor	.....	6 mo.	.....	100
Illinois	Felony	1 yr.	5 yr.	.....	.....
Alabama	Felony	2 yr.	up	.....	.....
Detaining female in house of prostitution:					
Alabama	Misdemeanor	.....	6 mo.	50	500
New York	Felony	2 yr.	20 yr.	.....	5,000
Illinois	Felony	1 yr.	10 yr.	.....	.....
Concealing death of bastard:					
Georgia	Misdemeanor	.....	6 mo.	.....	100
Illinois	Misdemeanor	.....	1 yr.	.....	.....
New York	Felony	2 yr.	5 yr.	.....	.....

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
Procuring miscarriage:					
Wisconsin	Misdemeanor	1 mo.	6 mo.	.....	100
New Mexico	Felony	3 yr.	Life	.....	.....
Georgia	Felony	Life	Death	.....	.....
Selling drugs or instruments for miscarriage:					
Nevada	Misdemeanor	6 mo.	1 yr.	500	1,000
Alabama	Felony	2 yr.	10 yr.	.....	500
Arizona	Felony	2 yr.	5 yr.	.....	.....
Adultery:					
New York	Misdemeanor	.....	6 mo.	.....	250
Alabama	Misdemeanor	.....	6 mo.	.....	100
Illinois	Felony	.....	Life	.....	
Wisconsin	Felony	1 yr.	3 yr.	200	1,000
Notorious cohabitation:					
New York	Misdemeanor	.....	6 mo.	.....	250
Oregon	Misdemeanor	1 mo.	6 mo.	50	300
Alabama	Felony	2 yr.	5 yr.	.....	.....
Massachusetts	Felony	.....	3 yr.	.....	300
Bribery:					
Georgia (a)	Misdemeanor	.....	6 mo.	.....	1,000
Arizona (b)	Felony	1 yr.	14 yr.	.....	5,000
Oregon	Felony	1 yr.	10 yr.	.....	.....
(a) disqualified to vote or hold office.					
(b) disqualified to hold office.					
Accepting bribe:					
Arizona	Misdemeanor	.....	6 mo.	.....	300
Georgia	Misdemeanor	.....	6 mo.	.....	1,000
Alabama	Felony	2 yr.	10 yr.	.....	.....
Nevada	Felony	.....	10 yr.	.....	5,000
Bribery of witness:					
Georgia (a)	Misdemeanor	.....	6mo.	.....	1,000
New Mexico	Misdemeanor	.....	1 yr.	.....	500
Wisconsin	Felony	1 yr.	3 yr.	.....	.....
Nevada	Felony	.....	10 yr.	.....	500
(a) disqualified to vote or hold office.					
Bribery of juror:					
Georgia (a)	Misdemeanor	.....	6 mo.	.....	1,000
Louisiana	Misdemeanor	.....	1 yr.	100	1,000
Oregon	Felony	1 yr.	10 yr.	.....	.....
Wisconsin	Felony	1 yr.	3 yr.	100	500

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
Falsely impersonating an officer:					
Oregon	Misdemeanor	3 mo.	1 yr.	50	500
Nevada	Misdemeanor	6 mo.	1 yr.	500	1,000
Alabama	Felony	2 yr.	5 yr.	.....	.....
Georgia	Felony	2 yr.	7 yr.	.....	.....
False swearing:					
Arizona	Misdemeanor	.....	6 mo.	.....	300
Louisiana	Misdemeanor	6 mo.	.....	.....	.....
	Felony	.....	2 yr.	.....	.....
Alabama	Felony	2 yr.	20 yr.	.....	.....
Illinois	Felony	1 yr.	14 yr.	.....	.....
Resisting an officer:					
New Mexico	Misdemeanor	.....	30 da.	.....	200
Nevada	Misdemeanor	.....	6 mo.	.....	500
Arizona	Felony	.....	5 yr.	.....	5,000
Alabama	Felony	.....	6 yr.	.....	.....
Rescue of prisoner:					
Nevada	Misdemeanor	.....	6 mo.	.....	500
Alabama	Felony	1 yr.	5 yr.	.....	.....
Oregon	Felony	1 yr.	14 yr.	.....	.....
Running gambling house:					
Massachusetts	Misdemeanor	.....	3 mo.	.....	50
Arizona	Misdemeanor	.....	6 mo.	100	100
Nevada	Felony	1 yr.	5 yr.	.....	.....
Illinois	Felony	2 yr.	5 yr.	.....	.....
Carrying concealed weapon:					
Arizona	Misdemeanor	10 da.	30 da.	.....	.....
Wisconsin	Misdemeanor	.....	6 mo.	.....	100
Oregon	Felony	.....	5 yr.	.....	500
New York	Felony	.....	.....	.....	.....
	Misdemeanor	.....	7 yr.	.....	1,000
Conspiracy:					
Alabama	Misdemeanor	.....	6 mo.	.....	1,000
Wisconsin	Misdemeanor	.....	1 yr.	.....	500
Georgia	Felony	1 yr.	5 yr.	.....	.....
Illinois	Felony	.....	5 yr.	.....	5,000
Prize fighting:					
Louisiana	Misdemeanor	.....	6 mo.	.....	500

Offense and State	Classification	Imprisonment		Fines	
		Minimum	Maximum	Minimum	Maximum
New York	Misdemeanor	.....	1 yr.	.....	500
Oregon	Felony	1 yr.	5 yr.	1,000	5,000
Illinois	Felony	1 yr.	10 yr.	.....	.....
Riot:					
Illinois	Misdemeanor	.....	6 mo.	.....	200
Louisiana	Misdemeanor	3 mo.	6 mo.	100	500
Alabama	Felony	2 yr.	5 yr.	.....	.....
Georgia	Felony	5 yr.	Death	.....	.....
Grave robbery:					
Alabama	Misdemeanor	.....	6 mo.	100	500
Georgia	Felony	1 yr.	10 yr.	.....	.....
Illinois	Felony	1 yr.	10 yr.	.....	.....

In the above tabulation extremes have admittedly been selected for presentation. This has been done deliberately in order to emphasize the confusion which exists as to what constitutes a felony and what a misdemeanor. The differences cannot be lightly explained away. The same state may have relatively light penalties for some offenses, and yet be among those having the most severe penalties for others. Thus Alabama makes abandonment of wife, criminal libel and conspiracy misdemeanors; while arson of woods, selling drugs for miscarriage and extortion are felonies. Similar differences appear even within a single group of offenses—e.g. those pertaining to sex. Thus in the same state of Alabama, adultery, enticing a female and procuring an inmate for a house of prostitution are misdemeanors; while selling drugs for miscarriage, allowing a minor in a house of prostitution and notorious cohabitation are felonies. The race problem does not wholly explain the situation. While false swearing and resisting an officer may have been made felonies as a means of controlling the negroes; impersonating an officer and extortion, which are more apt to be offenses of white men, are also felonies. Explanation in terms of race is further clouded by the fact that riot is a felony in Alabama, but only a misdemeanor in Louisiana; conspiracy is a felony in Georgia, but only a misdemeanor in Alabama. It is interesting to note other differences of emphasis in adjoining states. Thus, resisting an officer is a misdemeanor with a maximum imprisonment

of thirty days in New Mexico, but in Arizona it is a felony with a maximum of five years. Stealing a horse, cow or hog is a misdemeanor with a maximum penalty of one year in Wisconsin, but in Illinois it is a felony with a minimum of three years.

In the face of these discrepancies and this confusion, we may perhaps be justified in suspecting that the rating of an offense as misdemeanor or felony is simply an expression of the opinion of the dominant element in a state legislature at some particular time. We may further imagine that "log-rolling," "trading," compromise and passion at times enter into the process.[14]

Some Felons Less of a Menace than Some Misdemeanants

It is assumed, no doubt, by all who accept or defend the existing classification of offenders that felons are usually, if not always more dangerous to society than are misdemeanants. It is taken for granted that the acts listed as felonies are in themselves more harmful, or at least that they show their perpetrators to be more dangerous people. Hence it would naturally follow that especially severe measures should be taken to defend society against felons.

Presumably the penalty for any offense represents the concensus of opinion of the whole people or, more likely, of the ruling element, at the particular time this act was proscribed. But as time passes and economic life changes, what is at one time a matter of grave importance may become of less significance and vice versa. Thus among the cattlemen of the West, particularly before the advent of railroad and automobile, theft of a horse meant a really serious loss. It might endanger a man's life. But when the stockman has his automobile and the ranges are fenced, such an offense becomes of considerably less consequence. On the other hand, so long as the

[14] As an example of the practical problems which may arise out of this undiscriminating discrimination between misdemeanants and felons, attention is called to the debates of social workers as to whether family desertion should be placed in one category or the other. See e. g., National Probation Association. 9: 90, 99-103. National Conf. Char. and Corr. 1911: 406. Eubank, E. E.: "A Study of Family Desertion." Chicago. 1916. p. 59. Eubank in 1916 found this offense classified as a misdemeanor in 33 states, a felony in 15. This situation has created a problem for case workers who are making a definite effort to individualize the people with whom they are dealing. The relatively fixed penalty within any given state and the variation of legal status between states make it practically impossible to deal with family deserters in accordance with the specific factors in their several cases.

population consisted mainly of single men, whose gains and losses directly affected no one but themselves, gambling might be treated as a trivial matter. But with the establishment of families, loss of a month's wages at roulette or faro might mean a bare home and hungry children. Yet in each case the legal penalty may remain unchanged. For the new generation these penalties would then probably be the cause rather than the result of popular rating of the offenses. The way in which such a process goes on with the growth of industrialism is vividly suggested by Professor Ross.[15]

> . . . People are sentimental, and bastinado wrong-doing not according to its harmfulness, but according to the infamy that has come to attach to it. Undiscerning they chastise with scorpions the old authentic sins, but spare the new. They do not see that boodling is treason, that blackmail is piracy, that embezzlement is theft, that speculation is gambling, that tax-dodging is larceny, that railroad discrimination is treachery, that the factory labor of children is slavery, that deleterious adulteration is murder. . . . The mob lynches the red-handed slayer, when it ought to keep a gallows Haman-high for the venal mine inspector, the seller of infected milk, the maintainer of a fire-trap theatre. The child-beater is forever blasted in reputation, but the exploiter of infant toil, or the concocter of a soothing syrup for the drugging of babies stands a pillar of society. The petty shoplifter is more abhorred than the stealer of a franchise, and the wife-whipper is outcast long before the man who sends his over-insured ship to founder with its crew.

That such misplacement of emphasis as Ross mentions really exists may be seen from an exmination of the penal code of almost any state. Let us take a few instances from the laws of Illinois. The factory owner who fails to have dangerous machinery enclosed is a misdemeanant, and may be punished at most by a fine of $200, even though his neglect causes loss of life. But a man convicted of "involuntary manslaughter" may be sent to the penitentiary for life.[16] Fraudulent advertising of an article of merchandise, which may lead to wasteful expenditure of money by many needy families, is a misdemeanor punishable by a fine of not over $1,000, or 60 days in jail, or both. But the man who crawls through an open window to take a single suit of clothes is a burglar, and goes to the penitentiary for one to 20 years.[17] Whoever gives poison directly to another may be convicted as a felon and sentenced to the penitentiary up to 20

[15] Ross, E. A.: "Sin and Society." Boston. 1907. esp. pp. 14-16.

[16] Hurd's Revised Statutes. 1917. Chap. 48, Sec. 89, 114. Chap. 38, Sec. 145-146.

[17] *Ibid.* Chap. 38, Sec. 102c, 36.

years. But the seller of impure milk, which may cause the death of hundreds of infants, is only guilty of a misdemeanor, for which the maximum penalty is a fine of $100, or six months in a county jail, or both.[18] The man who sets fire to a house is convicted of arson and sentenced to the penitentiary for one to 20 years. He is a felon. But the owner or proprietor of a fire-trap lodging-house is at most guilty of a misdemeanor, subject to a fine of $25 to $100, with the possibility of staying in jail until his fine is paid.[19] Anyone who leads off a dog worth more than $15 is a felon and is liable to imprisonment in the penitentiary. But the cannery owner who robs children of the opportunity for education, who injures their health by long hours, who takes away the privilege of play, is only guilty of a misdemeanor and subject to a fine of $5 to $25.[20] The same idea is clearly illustrated by a former assistant district attorney of New York County.[21]

> Crimes bear no absolute relation to one another. A murderer may or may not be worse than a thief—and either may be better than his accuser. The actual danger of any particular offender to the community lies not so much in the kind or degree of crime which he may have committed as in the state of his mind. . . .
>
> There can be no general rule based merely on the name or kind of crime committed which is going to tell us which offender is really the worst. A misdemeanor may be very much more heinous than a felony. The adulterer of drugs or the employer of illegal child labor may well be regarded as vastly more reprehensible than the tramp who steals part of the family wash. So far as that goes, there are an alarming multitude of acts and omissions not forbidden by statute or classed as crimes which are to all intents and purposes fully as criminal as those designated as such by law. . . .
>
> . . . Two drunken men become involved in an altercation and one strikes the other, who loses his equilibrium and falls, hitting his head against a curbstone and fracturing his skull. The striker is indicted and tried for murder. Now he is doubtless guilty of manslaughter, but he is less dangerous to the community than a professional thief who preys upon the public by impersonating a gasman or telephone repairer and by thus gaining access to private dwellings steals the owners' property. One is an accidental, the other an intentional criminal. One is hostile to society as a whole and the other is probably not really hostile to anybody. Yet the less guilty is denominated a murderer, and the other is rarely held guilty of more than petty larceny. A fellow who bumps into you on the street, if he be accompanied by another, and grabs your cane, is guilty of robbery in the first degree—"highway" robbery—and may get twenty years for it, but the same man may publish a malicious

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[18] *Ibid.* Chap. 38, Sec. 230, 9.

[19] *Ibid.* Chap. 38, Sec. 13. Chap. 71, Sec. 12.

[20] *Ibid.* Chap. 38, Sec. 167. Chap. 48, Sec. 20, 21.

[21] Train, Arthur: "The Prisoner at the Bar." New York. 1915. Esp. pp. 5-9.

libel about you, and by accusing you of the foulest practises rob you of your good name and be only guilty of a misdemeanor. . . .

. . . Hence you may deduce a general principle to the effect that the charge against the prisoner, even assuming his guilt, indicates nothing definite as to his moral turpitude, danger to the community, or general undesirability.

Lest it be suspected that these statements are merely products of lively imaginations, let us consider a few bona fide cases. The first is that of a man convicted of felony and serving sentence in Sing Sing. The case is reported by Dr. Glueck, until recently director of the psychiatric clinic in that institution.[22]

The policeman who arrested an ex-convict whom he believed had reformed, admitted to us that he could not make up his mind whether to arrest the man but finally concluded that, inasmuch as it was an unusual hour of the night for anyone to be out, he might as well run him in. Incidentally it was the same police officer who had sent him to state prison on a former occasion. This man had lost two fingers while serving the last sentence and had fully determined never to expose himself to a similar experience again. A thorough investigation revealed the fact that the prisoner actually had been at work since his release from prison, that he was on a legitimate errand on the night of his arrest, but that his previous record and a threatening lecture by the judge intimidated him into confessing to an intent to commit the crime and so he was returned to state prison to serve another four years.

The next two are also felony cases reported by Dr. Ordahl from the penitentiary at Joliet, Illinois.[23]

An example of crime committed because of accidental circumstances is that of a laborer who had lived a successful life and was supporting a home and family. He had some bad habits, but in general was well behaved. He was attacked by an intoxicated person, and in the fight that ensued his assailant was killed. He was sentenced for manslaughter, but paroled within a year.

Another example is that of a young locomotive engineer who, on a holiday, became partially intoxicated and out of sheer sport made a bluff with two other companions at holding up a Chinaman. He was sentenced to the penitentiary for a term of from one to ten years. This prisoner was twenty-three years old, had a family and was making good wages. His past life was free from crime and his habits generally not bad; his mentality averaged normal.

Contrast with the felony cases just cited the following accounts of misdemeanants. Ask the question fairly, which group of offenders is the greater meanace to the safety and good order of the body politic? The first two are reported by Mrs. Solenberger of the old Chicago

[22] Mental Hygiene, 2: 553.

[23] Journal of Delinquency, 1:15.

Bureau of Chrities. The men were not convicted at the time she was dealing with them, but they were actually violating the vagrancy law.[24]

A lad who was a member of a tramp family became paralyzed when five years old. Both of his parents begged and they used his pitiful condition as part of their stock in trade. Very early in life he himself was taught to beg and to exhibit his shriveled leg to compel pity. He was never sent to school, never trained for any business but begging. This lad had an unusually bright mind, as well as a sunny disposition and other attributes which, if he could have received different training, might have assured him an honorable and useful position in life in spite of his physical handicap. But at seventeen, the age when he first came to the attention of the Bureau, he was, and today at the age of thirty-three he still is, a most accomplished and successful beggar, and one who refuses to consider any other means of securing a living although he has several times been offered opportunities to do so.

A. B. was a printer, aged 35; married and with four children. He had a good work record in his home city; he drank occasionally but not to excess and he was paying in installments for a home of his own when his wife, quite suddenly, died. Being unable to find a capable housekeeper he soon broke up his home and placed his children in institutions. In his intolerable loneliness following this action, he thought he would be happier if he could go to some new place and find employment. He set out with this intention, but failing to secure work, and even more restless and lonely in this city than in his own, he went on to another. Still not finding work he went to a third city, in the meantime drinking considerably and becoming daily more shabby in appearance. When his money was exhausted he began to beat his way from city to city, constantly associating with tramps both on the railroads and in the cheap lodging houses. Within a few months he no longer even made a pretense of seeking work but frankly dropped to the level of the men with whom he traveled.

When we knew him this man had been drifting and wandering aimlessly about the country for four years. He was sodden with whiskey and so degraded physically, mentally, and morally that it was difficult to believe that he had ever been the clean and useful citizen, with a family and a home of his own, which correspondence with his home city proved him to have been less than five years before.

The following instance is given by Miss Maude E. Miner, Secretary of the New York Probation and Protective Association.[25]

Catherine was sixteen years old when her mother died, leaving her in care of a shiftless father. The father's stupidity was shown by his ignorance of the ages and order of birth of his children, and his failure to remember about two who had died in infancy. His only knowledge of his family was that three brothers had met violent deaths and that his parents had "just died." One of Catherine's brothers was described as "thick-headed"; and a sister, eleven years old, was "slow in school"

[24] Solenberger, Alice Willard: "One Thousand Homeless Men." New York. 1911. Quotations are from pp. 158, 211-213.

[25] Miner, Maude E.: "Slavery of Prostitution." New York. 1916. pp. 43-44.

and had most vulgar sex knowledge. Within a week after his wife's death, the father had put the younger children in orphan asylums, had told the oldest boy to leave home because he had no work or money for board, and had turned Catherine out of the house. Catherine drifted from one place of work to another in an irresponsible manner and at twenty-one years of age, became a tool in the hands of her procurer-husband, soliciting for him on the streets and serving as his accomplice in stealing. She had married him in spite of knowing that he had married her friend Yetta two or three years before. A physical examination proved that Catherine was suffering from syphilis, and a mental examination showed that she had the intelligence of a nine-year-old child, and was "slow, dull, stupid, gross and careless."

Here we have as felons: (1) a man "railroaded" to Sing Sing although trying to lead a law-abiding life, (2) a laborer of ordinarily good habits who accidentally killed another, (3) an engineer who committed "highway robbery" as part of a holiday "lark." As misdemeanants we have: (1) a professional beggar who refused all opportunities to earn an honest living, (2) an habitual wanderer, drunken and degraded, (3) a feebleminded, syphilitic prostitute. Which of these groups constitutes the greater social menace?

It is not claimed that all felons or all misdemeanants are of the kinds described above. All we wish to point out is that a person may by reason of defective mentality, infectious disease, or habits of idleness, wandering or inebriety, be constantly endangering the safety or health of others, being himself a social parasite, without ever technically violating a law which would make him a felon. On the other hand, a person may become a felon by just once overstepping certain bounds. Some misdemeanants are so defective mentally or so firmly established in anti-social attitudes and conduct that it is doubtful whether anything short of permanent custodial care will suffice. On the other hand, some felons have such good mental and physical equipment, so well fixed habits of industry and sobriety that it is altogether reasonable to expect them to become good citizens again within a relatively short time.

Similar Characteristics of Misdemeanants and Felons

Out of the evidence that has been so far presented two ideas seem to stand forth rather clearly. There is nothing inherent in any act which renders it a misdemeanor or a felony, for a good many offenders are found in both categories. Moreover, a felon is not necessarily a more difficult problem nor a greater source of danger than a misdemeanant; in fact, the emphasis should sometimes be reversed. It

remains to be seen whether there may not be in the offenders themselves some other criterion of division, some justification for this classification. To anticipate—not only do we fail to find any such basis of separation; on the contrary, some striking similarities appear. First as to age:

AGES OF CALIFORNIA PRISONERS, 1914[26]

Age When Received	County Jails, 1914	State Prisons, 1914–15
21 and under	13%	11%
22–29	31	37
30–39	26	31
40–49	17	14
50 and over	13	7
Totals	100%	100%

Not only is there very little difference between the ages of these felons and misdemeanants, but such differences as appear are the opposite from those which might be anticipated. If anyone has harbored the opinion that misdemeanants are usually younger than felons, and should be separated on that basis, the above table should remove this misapprehension.

When we consider the matter of sex, it is equally clear that we are not dealing with a basis for differentiation of misdemeanants from felons. This appears from the exceedingly small percentage of women in both groups.

PERCENTAGE OF FEMALE OFFENDERS AMONG FELONS AND MISDEMEANANTS[27]

Prisoners received in—	Percentage of females among Misdemeanants	Felons
California County Jails, 1914	3.4	...
California City Jails, 1914–15	5.8	...
California State Prisons, 1914–15	...	1.0
New York County Penitentiaries, 1916–17	2.7	...
New York County Jails, 1916–17	6.0	...
New York State Prisons, 1916–17	...	1.0
Rhode Island State Workhouse, 1914–15	19.9	...
Rhode Island State Prison, 1914–15	...	6.9

[26] A Study in County Jails in California. pp. 28-29.
California State Board of Prison Directors. Report. 1916: 47, 179.
[27] Study in County Jails in California. 26.
State Board of Charities and Corrections (Cal.). 1916: 71.
New York State Commission of Prisons. 1917: 404, 426, 354.
Rhode Island Board of State Charities and Corrections. 1915: 87, 103.

This table shows pretty clearly that the number of women is both absolutely and relatively greater among the misdemeanants than among the felons. But there is certainly no justification for making sex a basis for distinguishing between misdemeanants and felons.

The similarity of the two groups continues in the matter of nationality.

BIRTHPLACE OF CALIFORNIA PRISONERS, 1914[28]

Birthplace	County Jails		State Prisons	
California	5,251	20%	536	19%
Other states	12,395	46%	1,376	48%
Foreign countries	9,142	34%	928	33%
Totals	26,788	100%	2,840	100%

BIRTHPLACES OF CHICAGO OFFENDERS, 1913[29]

Percentages of Misdemeanants and Felons Belonging to Various National Groups

Nationality	MISDEMEANANTS		FELONS		Per cent distribution of male persons in Chicago 21 years and over
	Arrests	Convictions	Arrests	Convictions	
American					
White	58.5	59.6	56.3	56.9	43.1
Colored	5.4	5.5	8.6	9.0	2.6
Foreign	36.1	34.9	35.1	34.1	54.3
Austrians	3.8	3.8	3.9	4.0	11.2
English	1.4	1.3	1.6	2.0	5.2
French	.2	.2	.2	.3	....
Germans	8.0	7.5	8.0	9.3	12.6
Greeks	1.8	2.4	1.4	.7	.6
Hollanders	.3	.3	.2	.2	.7
Irish	2.7	2.3	1.8	2.5	4.4
Italians	3.4	3.4	3.8	2.7	3.2
Russians	8.6	8.3	10.0	8.4	8.5
Scandinavians	3.3	3.3	2.1	2.4	6.7
Others	2.6	2.1	2.1	1.6	1.2

[28] A Study in County Jails. 30-31.
California State Board of Prison Directors. Report. 1916: 45, 178.

[29] Abbott, Grace: "Immigration and Crime." Delinquent. Aug., 1915. pp. 1-8.

In spite of some interesting variations, it may be stated that in general each national and racial group furnished about the same percentage of felons as of misdemeanants. Again, instead of a possible basis of distinction, we have found rather striking similarities.

Marital status proves no more available as a basis of division than age or sex. Here let the New York figures stand for the entire situation.

MARITAL STATUS OF NEW YORK OFFENDERS, 1915[30]
Percentage of married, single and widowed prisoners

	Married	Single	Widowed	
Total received from courts	40	57	3	Total
Transferred to state and extra-dept. institutions	32	66	2	Felons
Served time in city and district prisons	44	55	1	Msdmts.
Sentenced to workhouses	36	58	8	

Apparently there were more married folks among the misdemeanants than among the felons, but the difference is relatively small. Moreover, the fact that family desertion is a felony in New York may possibly account for a good many prisoners' claiming to be single when in reality they have wives somewhere. At all events the relative similarity seems of more significance than the difference.

When we come to occupation, it seems that there is a considerably larger percentage of unskilled laborers among the misdemeanants. It is impossible to say how marked this difference really is, for the methods of classification are so dissimilar. The following percentage table for California offenders shows that there is a certain difference, but the distribution of both groups among a wide range of occupations makes this an impractical ground of distinction.

OCCUPATIONS OF CALIFORNIA PRISONERS, 1914[31]
Percentages of prisoners in various occupational groups

	County Jails	State Prisons
Agricultural	4	4
Professional	1	2
Domestic and personal	9	15
Trade and transportation	9	22
Mining and fishing	3	2
Manufacturing and mechanical	13	22
Common laborers	55	24
Miscellaneous	6	9
Totals	100	100

[30] New York City Department of Correction. 1915. 74.

[31] A Study in County Jails in California. pp. 46-53.
California State Board of Prison Directors. 1916: 49, 176.

The classification of felons was made by the clerks at San Quentin and Folsom, that of misdemeanants by the writer. In the latter case a good many prisoners who might have been counted in some other group were counted as common laborers, because that was obviously where they belonged, if that category was to be used at all. The reason for its use is its presence in the jail registers, and the absence of more definite information as to the precise work in which the prisoners had been engaged.

Similar statistics of other states have been studied. The following table from New York shows a somewhat different distribution.

OCCUPATIONS OF NEW YORK PRISONERS, 1915–1917[32]
Percentages of prisoners in various occupational groups

	City Workhouses	State Prisons
Agricultural	0	4
Professional	1	2
Domestic and personal	34	13
Trade and transportaion	13	19
Manufacturing and mechanical	17	40
Common laborers	34	20
Miscellaneous	1	2
Totals	100	100

Again it seems that unskilled laborers are more numerous among the misdemeanants, but without knowing the precise basis of classification in each case, we cannot say how much more numerous they are. Furthermore, it is pretty clear from the above tables that misdemeanants as well as felons are distributed through almost all occupational groups.

PERCENTAGE OF KNOWN RECIDIVISTS[33]
In various institutions for misdemeanants and felons, respectively

	Misdemeanants	Felons
Allegheny County Workhouse	47	..
Chicago House of Correction	44	..
Holmesburg House of Correction	59	..
Rhode Island State Workhouse	50	..
Sing Sing	..	67
San Quentin	..	

[32] New York State Commission of Prisons. 1917: 373-376.
New York City Department of Correction. 1915: 57-64.
[33] Data on misdemeanants taken from previous chapter.
Data on felons: Mental Hygiene, 2: 95.
California State Board of Prison Directors. 1916: 47.

RECIDIVISTS COMMITTED TO NEW YORK STATE PRISONS, 1917[34]

Previous sentences in:	Actual Number	Per Cent
Prisons or penitentiaries	1,022	34
Reformatories	731	24
Refuges, jails, workhouses	620	21
Miscellaneous institutions	35	1
Total recidivists	2,408	80

On the surface it would seem that a larger proportion of recidivists is to be found among the felons. But in view of the very inadequate records of petty offenders this is by no means certain. We can, however, state with assurance that there is a great deal of recidivism in both groups of delinquents.

If we undertake to compare the physical condition of misdemeanants with that of felons, we must base our conclusions upon data which are for the most part indefinite and incomplete. However, if we should study the report of Dr. Stanley's examination of 1,000 prisoners at San Quentin,[35] and then turn to Dr. Sceleth's report as medical superintendent of the Chicago House of Correction,[36] we would be convinced of this much; viz., that there is need for many different sorts of medical and surgical care of misdemeanants and felons alike. More than that is hardly justified in view of our limited information.

The data concerning the mentality of delinquents are perhaps more numerous, but here the bases of judgment are so various that we should hesitate to draw hasty conclusions. In the last chapter we called attention to several reports which show that there is a considerable percentage of mental deviates among misdemeanants. It remains to examine the situation among the felons. In Dr. Glueck's study of 608 admissions to Sing Sing he found 59% mentally abnormal in some respect.[37] Dr. Edith R. Spaulding's examination of 400

[34] New York State Commission of Prisons. 1917: 377.

[35] California State Board of Prison Directors. 1916: 96-101.

[36] Chicago House of Correction. 1917: 34-44.

[37] Mental Hygiene, 2: 85-139.

These defectives were distributed as follows: mentally diseased or deteriorated 12%, intellectually defective 28%, psychopathic 19%. In the table which follows, we have eliminated the second group so as not to include borderline and other doubtful cases.

inmates of the Massachusetts Reformatory for Women showed nearly 17% morons and another 27% subnormal.[38] Similar studies have been made by Dr. and Mrs. Ordahl at Joliet,[39] Dr. Haines at the Ohio State Penitentiary,[40] Dr. Terman and Knollin at San Quentin.[41] As to the last, the classification of 155 "unselected subjects" was as follows:

Feebleminded	27	17.4%
Borderzone	20	12.9
Dull-normal	39	25.2
Average-normal	59	38.0
Superior	8	5.2
Very superior	2	1.3
Totals	155	100.0%

RELATIVE NUMBER OF DEFECTIVES REPORTED FROM STUDIES OF MISDEMEANANTS AND FELONS[42]

	Percentage of defectives among offenders studied	
	Misdemeanants	Felons
Columbus (Ohio) Workhouse	33%	
"An Ohio Workhouse"	29–59	
Philadelphia House of Correction	33	
Sing Sing (New York)		31–59%
Massachusetts Reformatory for Women		17–44
Joliet (Illinois)		19–67
San Quentin (California)		17–30

This table cannot in the nature of the case be satisfactory, because the standards of measurement differ so greatly. But, crude though it be, it serves to emphasize the fact that mental ability will not suffice as a basis for distinction between misdemeanants and felons.

[38] Journal of Criminal Law, 5: 704-717.

[39] Delinquent. Sept., 1915: 1-6.
Journal of Delinquency, 1: 1-21. 2: 331-351.

[40] Journal of Criminal Law, 7: 702-721.

[41] Surveys in Mental Deviation in California. State Board of Charities and Corrections. 1918. 6-19.

[42] For sources of data on misdemeanors see Chapter III. Data on felons cited above.

The conclusion that seems to emerge pretty clearly from the evidence submitted may be stated paradoxically. Felons and misdemeanants are very much alike, and yet each individual is different from every other. Whether we classify them according to age, sex, marital status, birthplace, occupation, recidivism or mental condition, we find no very significant differences in distribution. Minor differences do appear, for example, in occupation and mental rating. But while it is possible that there are more skilled workmen among the felons, there are also many common laborers; on the other hand, there are professional men and artizans among the misdemeanants. While the average native ability of misdemeanants may be lower than that of felons, a considerable proportion of the former rate higher than the average of the latter. All in all, we find many reasons for emphasizing their common humanity and individual differences. We find in personal characteristics no adequate basis for classification as misdemeanants and felons.

The Same Man Now a Misdemeanant, Now a Felon, Without Fundamental Change in Himself

Statistical evidence is available, wherever suitable records are kept, to the effect that many offenders are at one time misdemeanants, at other times felons. Thus the 1917 report of the New York State Commission of Prisons shows that out of 2430 recidivists, 187 had previously been confined in refuges, 162 in jails, 274 in workhouses.[43] Bonger cites Austrian figures comparing the proportion of convicts previously convicted of a misdemeanor or contravention with those found guilty of felonies.[44]

Out of case histories we learn not only that the same person may be now a misdemeanant, now a felon, but in addition that he is all the while about the same sort of a human being.[45] A hitherto unpublished case record illustrates this fact admirably. We are indebted for it to Paul Wander, formerly associated with Dr. Glueck, as sociologist in the Psychiatric Clinic at Sing Sing.

[43] Page 377 of the report cited.

[44] Bonger, W. A.: "Criminality and Economic Conditions." Translated by Henry P. Horton. Boston. 1916. Page 522.

[45] See cases presented by:
Glueck in the Delinquent. Feb., 1918: 6-10. March, 1918: 1-11.
Haines in the Journal of Delinquency, 1: 171-186.
Kirchwey in Journal of Criminal Law, 9:327-340.

Job and Matthew C———

The ancestors of Job and Matthew C———, known in the region as of "mountineer" stock, have for more than five generations lived as squatters in the Ramapo Hills of New York State. The men are characterized as rugged, powerful of physique, and generally free from disease. Their habitations were crude shacks in remote mountain pockets, and their chief occupations chopping cordwood, cutting timber and bark, weaving baskets, and carving scoops, ladles and similar domestic implements obtained in the forest. When the heavy timber was gone, and the brickyards which they had been supplying with fuel began to substitute oil for wood, and the village store no longer traded provisions for their baskets and trays, their principal source of livelihood failed and idleness and strong drink supervening induced widespread degeneracy among them. The farmers of the region made and fermented "applejack" in large quantities and dispensed it with calculated liberality among their helpers at harvest time. Drunkenness became endemic among the C, who have been notorious for their intemperance ever since. . . .

The mother on account of her own obvious limitations has exerted only the most feeble influence on the intellectual and moral development of Job and Matthew. Indeed, by virtue of her ignorance and superstition she has been at least indirectly responsible for their highly irregular school attendance, their social isolation and retardation, their industrial inefficiency, and their moral immaturity. The same general indictment applies to the father as well, whose gentle, easy-going manner and lack of firmness disqualified him for the exercise of necessary parental authority. . . .

Job is described as tractable and docile and easily governed, while Matthew was inclined to rough fun, "cutting up," and lawlessness, especially outside the home. Neither played much: Job less than Matthew, nor did they mingle freely with other boys of the neighborhood. Job was quiet and somewhat seclusive, Matthew more lively and sociable. They found few companions among their schoolfellows and seem to have made no fast friends. Being required by their parents to work from early childhood, they had little time for play, and what they had they spent at home. Among strangers, especially among those of higher social and mental grade, they have always felt ill-at-ease and awkward, and apparently for this reason Matthew preferred the uncritical society of children younger than himself.

Aside from being backward and bashful in manner, Job and Matthew were unattractive to other children by reason of their neglected if not disreputable appearance and uncouth speech, and were avoided and looked down upon by most of their schoolmates and neighbors as belonging to the despised "mountaineer" folk. Matthew, in particular, felt the force of this ostracism at school, and neither he nor Job was admitted to any genuine association with children from families of more progressive standards of living and culture. As a natural consequence they turned for the satisfaction of their sociability needs to their own poor kinship circle.

The family has never known a fixed abode. For generations the ancestors, including the parents of Job and Matthew, squatted in mountain pockets until dislodged by the passing of the woodland into private ownership in the form of large estates. Within the lifetime of Job and Matthew alone the family has migrated some twenty times. . . .

Their usual habitations were rough shacks, sometimes constructed by themselves, and providing most unsanitary and unwholesomely congested quarters. Except in one or two instances, where the family temporarily occupied as many as three or four rooms, they have never enjoyed decent privacy or essential sanitary and household conveniences. Bathtubs, water-closets, running water, have been practically unknown luxuries at all times. All water has to be carried; sometimes long distances. Toilet facilities are most primitive. . . .

Even though the family denies having suffered acute want for any length of time, they admitted that "it took all they could earn to keep alive," and there is abundant evidence pointing to a chronic state of want, a wretched hand-to-mouth existence, a constant tendency to undernutrition, and periodic semi-starvation. And this abiding condition of poverty may fairly be set down as due less to their industrial inefficiency and correspondingly low wages as such, than to their prevailing shiftlessness and improvident habits, and their lack of economic intelligence.

On several occasions, under severe economic stress, the family or some of its members have so far overcome their native inertia as to migrate in search of an improved livelihood. Usually they have followed the invitation of relatives established elsewhere, who have reported better wages or opportunities of employment. In several instances, on the other hand, notably in recent years, they have been tided over periods of special hardship by securing credit from their employers. Any other available sources of relief, both private and public, have been utilized, though not until absolutely necessary to maintain existence. . . .

The brothers have found their pleasures chiefly and almost solely in hunting, fishing and strong drink, the last of these seeming to yield them the keenest satisfaction of all. They derived genuine enjoyment out of getting thoroughly soused, and called this experience "having a good time." They rarely applied themselves to hunting or fishing with sufficient zest to depend upon it largely for food: seemed to lack the necessary power of concentration even in this direction of their primary play interests. Incidental to their quest for game or liquor, they also exhibited a taste for roving, but they seldom absented themselves from home for more than a day or two at a time. A predilection for "loafing" is also to be noted. Job and Matthew and their older brothers were practically confined for their sociable pleasures to loitering and drinking with other idle men and boys. For the sake of this diversion they would often leave their work in the middle of the week, and on the pretext of going hunting or of buying groceries in the village would spend their money on beer and whiskey, usually returning home drunk. They consistently refrained from attending any parties, dances, picnics, or neighborhood gatherings of any kind: partly, no doubt, owing to their lack of presentable clothing, but in part also because of their inherent lack of sociability and their general unpopularity. They are said to feel no desire for such forms of recreation, nor for motion pictures, of which they have seen but few: doubtless a case of sour grapes. They know nothing of theatres, concerts, books, pictures, and next to nothing of magazines and newspapers. The only trace of the aesthetic appears in Matthew, who is credited with a fondness for making music on a harmonica. . . .

The family standards and morals in sex matters are so lax that it is difficult to speak of specific acts of immorality. The men, i.e., the young men of the family,

are said to cohabit, largely regardless of marriage ties, with women of their own blood, and sometimes with girls as young as 13 and 14. When a child is born, they may arrange either voluntarily or by order of court to cover up the illegitimacy by formal marriage, and cases of bigamy are not unknown. The women, especially the feebleminded ones, are quite as loose as the men. The presence of those of their children who were born out of wedlock cannot but affect unhappily the moral tone of their home life, although there seems to be no clear consciousness of wrong on the part of the parent. Little definite information can be gained regarding the sex life or habits of Job and Matthew, who seem on the whole to have had little contact of any sort with women not of their own kin.

The scholastic career of Job and Matthew was irregular and abortive. Job seems to have attended school between the ages of 12 and 14—somewhat over two terms. Matthew entered at 8 or 10 and continued with numerous interruptions up to 16. . . .

Although Job's presence in school was relatively brief, it was sufficient to demonstrate his inability to progress in the primary grades: he has never learned to read or write even his own name. They are said to have forgotten from one day to the next what they were taught in school. They learned to copy the letters of the alphabet, but not to read them when written, nor to use them independently in words. Matthew likes to scrawl and draw and is considered something of a penman. He reached the third reader by the age of 16, while Job is believed by some to have attained to the second reader. Needless to say, neither betrayed any positive interest or aptitude in school except as noted above in the case of Matthew. As to their mathematical ability, one saloonkeeper affirms that they are apt to accept whatever change is returned to them without verifying the amount. It appears that their teachers, while in general kindly and encouraging with reference to the material and social handicaps of Job and Matthew, were inclined to be apathetic toward their intellectual difficulties, probably from a recognition of these as insuperable defects. . . .

Job and Matthew have never acquired any specialized occupation or industrial proficiency, but may be classed as agricultural laborers, most of their wage-earning lives having been spent on the farm. They began to work casually for pay as quite young children: "almost as early as they could walk" they were employed picking strawberries in the field at 25 cents and up per day. But not until the age of 10 or 12 did they work with any regularity for wages. Matthew worked considerably while still at school, assisting his elders on the farm. Beginning with 50 cents as a day's wage, they advanced by the time of reaching maturity to $1.50 per day, or nearly the current rate of agricultural wages. Now and then they have earned as high as $2.00 and $2.25 per day while employed on the state highway, erecting fences for the railroad, shoveling coal from cars, etc. But not being adapted to such labor on account of its orderly and continuous character, they rarely followed it for more than a few days together. They either lost such employment through drunkenness and irregularity in attendance, or were discharged on being discovered soldiering, or abandoned it as too exacting. They have held no industrial employment long enough to gain skill or advancement in it or to accumulate savings. The more primitive routine of farm and orchard, including as winter chores woodchopping, trimming trees, clearing brush, marked the level of their industrial capacity. . . .

A search for criminalistic antecedents in Job and Matthew's history fails to reveal any unambiguous evidence of an inherent disposition to criminal conduct of the type of which they have been convicted. So completely foreign to their normal character and behavior appeared the act of the murder of Henry Danziger, with the brutal mutilation accompanying it, that those who have been in a position to be most familiar with the everyday temper of the two found difficulty in believing them guilty. But certain traits, tendencies, circumstances, by no means all of which were admitted as evidence at the trial, throw at least an indirect light upon that otherwise anomalous event. In the first place, as is admitted by the district attorney in private conversation, both were "soused" when they committed the deed. They would never, in the private opinion of the trial judge, have committed or conceived of this murder, but for their profoundly intoxicated condition (in recognition of which fact Judge Tompkins saw fit to commute the verdict of first degree murder to one of second degree). There was neither plan nor premeditation nor any rational motive involved in the act. It is supposed that, staggering home from a carouse and meeting the old man, a stranger, said to be of a sour disposition, on the road, they struck him upon provocation of some kind, and frightened by what they had done, pursued him into the woods and finished him with the barrel of Job's gun. In any case, the crime was perpetrated in a fit of madness, with Matthew probably playing a primary and Job an accessory rôle, though both were jointly and immediately implicated.

It appears that Job directly afterwards broke down and cried like a child, this reaction being not uncommon with him when he is in trouble. It is known, moreover, that he had eaten no regular meal for over 24 hours preceding the crime, and that the four glasses of beer and pint of whiskey taken on an empty stomach had weakened not only his powers of inhibition but his powers of independent locomotion as well.

Alongside of Job's phlegmatic and surly disposition, accentuated by the influence of alcohol, we have Matthew's tendency to mischief and aggression, similarly exaggerated by drink. It is admitted by the family and borne out by the statements of saloonkeepers that under liquor Matthew's childish and playful manner would readily change to one of boisterousness and folly, and that further irritation or offense might render him positively violent and dangerous. This underlying "temper" occasionally came to the surface even in the absence of intoxication, as was shown by the case of his savage attack on his school fellows at Haven; but it never assumed so vicious a character as to indicate criminality. Job, on the other hand, while slower to anger, is said to be even more ferocious when aroused. According to a very old man who was personally acquainted with their ancestors for several generations, while all these were heavy drinkers and fist-fights and drunken brawls were not uncommon among them, none are known to have committed deeds of violence and aggression. An isolated incident reported of Riley, the father, who is said in a drunken rage to have thrown an axe at his son, Sheridan, has not been verified and can scarcely be used.

Such minor offenses against law and public peace as would constitute the criminal record of Job and Matthew, seem in almost every case complicated if not induced by intoxication. While exceedingly undignified, their conduct in the village was for the most part sufficiently peaceful not to land them in the local jail for disorderly conduct. The Justice of the Peace of S——— admits having heard complaints

about them, but remembers no arrest on this score having been made. The attorney, however, who conducted Job's defense in the murder trial, recalls one instance of Job being locked up over night for boisterous conduct while drunk. Outside the village, at any rate, they were known to have quarreled among themselves, while intoxicated, and once fought a bloody battle with rocks on the public highway. When alone among strangers they were inclined to be timid and gentle, but in the company of their kind, and especially after drinking, would tend to grow bold, aggressive, and lawless in their relations to outsiders, ready to annoy neighbors of like social station or even to do them injury. One inoffensive old man in particular a mountaineer like themselves, seems to have been their favorite victim. He endeavored not to give unnecessary provocation but on the contrary to avoid them when they appeared intoxicated. According to his story, he one day met Matthew on the road with one E. Without any warning or apparent reason, Matthew, who was drunk, struck the old man a violent blow behind the ear, almost knocking him down, and was only restrained by his companion from doing further harm.

The only recorded case of overt conflict with the law prior to the murder is one of disorderly conduct tried in June of last year by the local Justice of the Peace. Had this case been handled by the authorities with proper energy and intelligence, Job and Matthew would have been charged with felonious assault and promptly convicted. According to all reports, they went to L. in quest of a pint of whiskey on a Sunday evening, in company with one E., a feebleminded young alcoholic, whom they commissioned to secure the whiskey for them at F.'s saloon, giving him a quarter to pay for it. When E. returned without whiskey or money, they set upon him and beat and bruised him unmercifully. When haled into court the next day, they were accompanied by nearly a dozen kinsmen, all of whom swore that they had been at home and in bed at the time this assault had taken place. The injured man having no witnesses, the perjured alibi of the defense was accepted and the case dismissed. Since then Riley, the father, has admitted to the deputy-sheriff that Job and Matthew did that deed. It is believed that they were in liquor when they did it, and the circumstances of their victim's defencelessness is likewise significant.

Many times in their life these two men might have been arrested and convicted of misdemeanors: drunkenness in public places, sid-orderly conduct, vagrancy, assault. At least twice such arrests were made; both times the case was dismissed, although there is no dispute as to the fact of guilt. When finally they were found guilty of a felony, it was not due to any important change in the men themselves, but because they happened to perform an overt act which is punishable by death or by imprisonment in the state prison. At any time previous to this they might have committed a felony, had circumstances been only a little different. On the other hand, it is conceivable that in a slightly different combination of events they might never have become felons. But all of the time they would have been

what they are: comparatively insensitive and underdeveloped morally and deficient mentally; as harmless as they are worthless while sober, and a distinct public nuisance when drunk.

Common sense and every-day experience bear out the opinion that the offender who is rated today as a misdemeanant, tomorrow as a felon, probably has undergone no important change. Thus a prostitute is frequently arrested on a vagrancy charge—as such she is a misdemeanant. If perchance the charge be that of selling liquor without a license, or "soliciting," she is still a misdemeanant. But if she should steal a gold watch from one of her "customers," she would be a felon. What the present legal classification blinks at is that she is primarily a sex offender, probably a center of infection, perhaps mentally abnormal; and that she is this, quite regardless of whether the particular overt act which immediately preceded and led to her arrest happened to be classified as a misdemeanor or as a felony.

Economic Argument for Abolishing the Distinction Between Felons and Misdemeanants

We have seen that the classification of offenders as felons and misdemeanants grew out of an historical situation which no longer exists. We have sought in vain for any element in the present situation which would render its continuance necessary or desirable. We have found it a source of confusion in our thinking about delinquents. There is a more immediate way in which it may interfere increasingly with the most effective treatment of offenders.

It is coming to be more and more agreed that it is desirable to apply the principle of individualization to misdemeanants as well as to felons. If, now, we continue to handle offenders in two separate classes, we must apply this principle through two sets of institutions. If the handling of misdemeanants should be taken over by the state, which seems likely in view of present tendencies, it would mean two sets of state institutions, a double correctional system for adults. Roughly speaking, to attain a given degree of individualization or specialization, this will make necessary twice as many institutions, and probably the expenditure of a good deal more money than would be required if there were a unified correctional system. Or, approaching it from the other side, the same number of institutions and the

same expenditure of money, in a unified system, would make possible a much higher degree of specialization and individualization. In other words, the economical application of the principle of individualization to misdemeanants (or to offenders in general) requires the abolition of the ancient distinction between felons and misdemeanants.

CHAPTER V

A Basis for Individualization

In our study of various ways of handling misdemeanants we discovered a pretty definite tendency toward individualization. In studying the misdemeanants themselves we found a reason for this in the fact that each offender seems to be more or less different from every other. Our examination of the classification of delinquents into two groups—misdemeanants and felons—lent further strength to the idea that practise as well as theory demands attention to the fact of individual variation. However, we have also had a hint that practical application of this outstanding principle will be no simple matter. In order to solve this last difficulty it seems necessary to set forth as definitely as we can just what we mean by individualization. Clearness on this point is fundamental, if we are to work out a constructive program which is to be anything more than a "rehash" of those already described.

The Fact of Individual Differences

If we could adequately describe each of a million human beings—if, for each one, we would prophesy just what his response would be to every possible situation of life—the million men would be found to differ widely. Probably no two out of the million would be so alike in mental nature as to be indistinguishable by one who knew their entire natures. Each has an individuality which marks him off from other men. Each has not only a mind, the mind of the human species, but also his own specialized, particular, readily distinguishable mind. Even in bodily nature, indeed, men differ so much that it would be hard to find, amongst a million, two whose features are just alike, who are equally susceptible to every disease, who have identical bodily habits. The differences in intellect and character are far greater.

The study of the facts and laws applicable to all men by virtue of their common humanity gives us fundamental rules for the control of changes in intellect and character. The study of the facts and laws of individual differences enables us to apply these principles economically in the case of each individual whom we seek to influence. . . .

The customary view has been that "types" or particular combinations of amounts of human traits could be found so that any individual would be much like some type and much less like any of the others. But no one has succeeded in finding such types, and the more clearly the supposed types are defined, the surer it becomes

that intermediate conditions, equally like several of the types exist in great numbers. Either new types have to be added until there are so many that one may as well let each individual be his own type; or the number of individuals not falling readily under any type is so large that the attempt to classify men by them hinders rather than helps thought and practical control. Only very rarely can anything approaching at all closely to an accurate and adequate account of a man's individuality be given by the statement that he is of this or that "type."

In fact, there is much reason to believe that human individualities do not represent ten or a hundred or a thousand types, but either *one single type* or *as many types as there are individuals*, according to whether the thinker wishes to emphasize the common humanity around which they vary or the exact nature of their variations from it. By this view the effort to assign individuals to a number of classes, as we assign animals to the classes "mammals," "reptiles," "amphibians," "fishes," etc., is doomed to failure or incompetence. The first duty of the thinker is to learn the constitution of the one type, *man*. His second duty is to learn each individual's variation from this common humanity. In theory it means that man is mentally, as much as physically, one species. In practice it means that each individual must be considered by himself.[1]

This statement of Thorndike, the psychologist, so accords with "common sense," that we almost wonder how there can be any question about the fact of individual differences and the importance of taking them into account. What is there to argue about anyway? The problem lies in the antithesis between this proposition whose truth seems axiomatic and the way we actually deal with offenders. We have seen already, in Chapter I, that misdemeanants are usually handled in a pretty mechanical fashion, that for a given "crime" a given judge will mete out a certain relatively fixed penalty. Why is this true? One answer may be found in the historical development of the fixed penalty system.

Historical Background of the Fixed Penalty System

In his introduction to the English translation of Saleilles' Individualization of Punishment, Roscoe Pound undertakes to account for our present problem in historical terms. He ascribes the system of fixed penalties, first of all, to a reaction against misuse of criminal law by agents of the Crown both in England and in France; American codes having their roots in these two European systems.[2]

[1] Thorndike, E. L.: "Individual Differences." Psychological Bulletin 15: 148-159. (May, 1918.)

[2] Saleilles, Raymond: "The Individualization of Punishment." Translated by Rachel Szold Jastrow. Boston. 1911. pp. xii-xv.

Professor Saleilles' account of the relation of the classical theory to French penal legislation should be of especial interest in America. Substantially all that he says as to the Penal Codes of 1791 and 1810 applies equally to our criminal legislation. For the New York legislators had the French Code of 1810 before them. Livingston's discussions, based on French sources, were before them, and the theories on which the French legislation proceeded were familiar and congenial. It follows that the American criminalist has little to add. Perhaps two points deserve notice. In the first place, the desire to preclude arbitrary judicial action was especially strong in America, because in the hands of appointees of the Crown the criminal law had been found an efficient engine of political and religious persecution. Unhappily, our law as to misdemeanors had developed in the court of Star Chamber, and the contests between the common law courts and the Crown in the seventeenth century had convinced the next age that there was no safety except in hard and fast legal formulas applied mechanically. . . . But in France also the classical theory was a reaction against abuse of absolute power. In consequence the American reader will find the author in sympathy with views which have come to us through our legal history. For our experience has not been unique. It is an inherent difficulty in the administration of punitive justice that criminal law has a much closer connection with politics than has the law of civil relations. There is no great danger of oppression through civil litigation. There is constant fear of oppression through the criminal law. Not only is one class suspicious of attempts by another to force its ideas upon the community under penalty of prosecution, but the power of the majority to visit with punishment practices which a strong minority consider in no wise objectionable is liable to abuse, and, whether rightly or wrongly used, puts a strain upon criminal law and administration. All criminalists must reckon with this difficulty. Perhaps American lawyers insist upon it unduly, to the exclusion of other points of no less importance. But revolutionary France had the same ideas, and by consequence the author canvasses the very objections and discusses the very requirements of legal policy which we also must consider.

Secondly, Professor Pound points out the influence of the Puritans. They felt keenly the abuses of unrestricted ecclesiastical and political authority. But they substituted for the absolute bishop and king merely another absolute, the letter of the law; for the tyranny of the official, the tyranny of the code. The influence of all this upon penal codes is a result of the dominance of Puritan ideas during the formative period of the common law.

Secondly, we must take account of the part played by Puritanism in the development of Anglo-American law. The relation of Puritanism to the common law is quite as important a part of the philosophical history of our legal system as the relation of Stoic philosophy to Roman law is part of the history of that system. In each case we have to do with the dominant fashion of thinking upon fundamental questions during a critical period of growth. The two growing periods of our legal system, the two periods in which the rules and doctrines that obtain today were formative, were the classical common law period, the end of the sixteenth and

beginning of seventeenth century, and the America common-law period, the period of legal development in America that comes to an end after the Civil War. But the age of Coke was the age of the Puritan in England, and the period that ends with our Civil War was the age of the Puritan in America. Here he was in the majority and made the institutions to his own liking. It is no accident, therefore, that common-law principles have often attained their most complete logical development in America. Hence the contribution of individualist religious dogma to the criminal law was much greater in America than in France. The individualization in practice which was permitted by the canon-law conception of searching and disciplining the conscience was wholly alien to the Puritan. For above all things he was jealous of the magistrate. If moral questions were to be dealt with as concrete cases to be individualized in their solution, subordination of those whose cases were decided to those who had the power of weighing the circumstances of the concrete case and individualizing the principle to meet that case might result. His idea of "consociation but not subordination" demanded that a fixed, absolute, universal rule, which the individual had contracted to abide, be resorted to. "Nowhere," says Morley, "has Puritanism done us more harm than in thus leading us to take all breadth and color and diversity and fine discrimination out of our judgments of men, reducing them to thin, narrow and superficial pronouncements upon the letter of their morality or the precise conformity of their opinions to accepted standards of truth." But this is exactly the method of the classical theory in criminal law. Indeed, our common-law jurists have taken it to be fundamental in legal theory. Thus Amos says: "The same penalty for a broken law is exacted from persons of an indefinite number of shades of moral guilt, from persons of high education and culture, well acquainted with the provisions of the law they despise, and from the humblest and most illiterate persons in the country." And, be it noted, he states this as a matter of course, with no hint that we may attain anything better. Thus political events and the Puritanism of nineteenth-century America tightened the hold upon us of a theory which on other grounds for a time was accepted everywhere. For to find a proper mean between a system of hard and fast rules and one of completely individualized justice is one of the inherent difficulties of all administration of justice according to law. And in the movement to and fro from the over-arbitrary to the over-mechanical, the eighteenth and nineteenth centuries stood for the latter.[3]

This statement of Pound's may be supplemented by two other ideas. McLaughlin points out[4] that the "social compact" was a concept much used in our constitution-making. This doctrine is one that would lend itself readily to the idea of establishing fixed penalties for breach of the social contract. Locke and Rousseau had propounded a theory which was popular in America at the time our state and national governments were being formed. It seems reasonable to suppose that it influenced the penal codes as well.

[3] Pound. loc. cit.

[4] McLaughlin, A. C.: "The Courts, The Constitution and Parties." See especially Chapter IV.

The general suspicion of government, whether in the person of executives or judges, was very real in early American history. The origin of this attitude has already been suggested by Pound and is further described by such historians as Taswell-Langmead.[5] This resulted among other things in the "due process of law" of the fifth amendment to the Federal Constitution and to similar clauses in state constitutions. Taylor[6] shows how the reaction against Star Chamber trials and similar abuses under Charles II and James II were influential in giving prominence in American law to the two ideas "due process of law" and "equal protection of the law." He also makes it clear that these concepts had something to do with the fixing of definite penalties in criminal law.

Thus the historians have helped us to account for the fixed penalty system in terms of (1) the reaction against arbitrary and oppressive judges, (2) the Puritan insistance upon fixed rules of conduct as a means of escaping from episcopal domination, (3) the theory of a social contract, (4) the doctrines "due process of law" and "equal protection of the laws." This seems to explain pretty well the origin of a penal system that does not harmonize with the "common sense" observations of individual differences. It has restated our problem, but has not given us any hypothesis for its solution. But here we have the elements of our problem: on the one hand, fixed penalties for given offenses; on the other, recognition of the fact of individual differences.

Practical Difficulties of Individualization[7]

The evidence presented to show what sort of people misdemeanants are would perhaps be for many an adequate basis of individualization, especially when correlated with a statement like Thorndike's. Thus, we found misdemeanants, we well as felons, of both sexes, all ages, both native and foreign born, black and white, married and

[5] Taswell-Langmead, Thos. Pitt: "English Constitutional History. London. 1896. See especially pp. 464 ff.

[6] Taylor, Hannis: "Due Process of Law and the Equal Protection of the Laws." Chicago. 1917. See especially pp. 55-6, 831-840.

[7] These are stated in some detail by Parmelee in his "Criminology" (New York. 1918), especially on page 394 and following. We are leaving a full discussion of these and an answer to Parmelee's "objections" until we shall have outlined our own program of individualization. Suffice it to say here that we do not accept the limitations set by Parmelee.

single, skilled and unskilled, recidivists and first offenders, old residents and transients, sick and well, feebleminded and normal, illiterate and college graduates. Moreover, we found them being arrested for a wide range of offenses from fishing without a license to threatening death, from indecent exposure to embezzlement, from riding on the sidewalk to habitual drunkenness. That is, it seems clear that when we come to know these petty offenders with even an approach to intimacy that there actually are so many different kinds of them—so many different causal factors, and so many different combinations of them—that classification is well-nigh impossible. On the other hand, the practical requirements of administration compel us to resort to something in the nature of classification. From the financial viewpoint alone a separate scheme of treatment for each offender seems to be quite impossible. Methods of going at the same problem in the schools, however, suggest that individualization need not mean just this But more as to that anon. Here we have a very definite problem of financing a scheme of individualization.

There are a number of ways in which the financial difficulty may be considerably modified. First of all, there is the possibility of uniting the systems of handling misdemeanants and felons, utilizing existing plants so far as possible, and turning money away from the up-keep of congregate county jails into the maintenance of state institutions established for the care of special groups of offenders. In the second place, we may count upon the productive employment of a large number of prisoners to reduce costs. Such experience as that of the Detroit House of Correction and the Kansas City Municipal Farm[8] indicates that the large expense of maintaining idle men in county jails is unnecessary. Third there is the probability that indeterminate sentences will reduce the amount of recidivism and ultimately reduce the number of arrests and trials with their attendant costs, thus making more money available for treatment. Also when recidivists are counted only once, the total number of petty, as well as serious, offenders will be found much smaller than now appears. Fourth, we look for a saving to society by lessing the losses due to theft, habitual idleness, etc., and also by immediate productivity while undergoing correctional treatment, as well as by rehabili-

[8] Detroit House of Correction. Annual Reports. 1862—.
Kansas City Board of Public Welfare. Annual Reports. 1910—.

tation of at least a fraction of those who are now parasites. We may count also upon other factors such as "prohibition," more intelligent economic legislation, segregation of mental defectives, educated police, simplification of criminal procedure, etc., to reduce the number of offenders and the costs of caring for them.

But after we shall have made all these changes for the purpose of economy we will still have the problem of individualization. Clearly these changes alone will not remove our difficulties. Perhaps the trouble lies in us, in our definition of the individual. So far we have spoken almost as though he were a distinct entity. We have emphasized his distinctive characteristics, but we have rather ignored those respects in which he is like other people. We have emphasized men's individual differences, but we have neglected their common humanity. This suggests that a restatement of our problem in terms of social relations will bring us nearer a solution.

The Problem in Terms of Social Relations

Among the people we know well we recognize marked personal distinctions. We have no difficulty in stating their individual peculiarities. Our relations with them may be described as *concrete*. To us they are specific people, not types. Our mental imagery of them is clear-cut and filled out in practically all details. We know them as brothers and as parents, as merchants and as church-members as members of lodges and clubs, and in nearly every capacity which they may fill. We have in consciousness a relatively complete picture of every member of our primary group. Perhaps this sort of relationship is most clearly seen in some isolated community such as may be found among the Cumberland Mountains of Kentucky. In the more remote mountain valleys there are practically no strangers, everybody knows everybody else, class distinctions do not exist, poverty is there but not pauperism, criminal courts have very few cases. There is a delightful intimacy, a charming spirit of neighborliness in such a primary group. In the large industrial community the situation is distinctly different. Yet here too intimacy is possible. Only, those with whom we are intimate may not have anything to do with each other, and some of their best friends may be strangers to us. But for each of us there is a primary group within which our relations are concrete. Here genuine sympathy may grow up, because we are

able to put ourselves rather completely into each other's places. Our contacts are simple, straightforward, definite, comprehensive.

But outside this inner circle, which seems to exist for each one of us, we have relations of a different sort. There are, for example, the relations of salesman and customer, lawyer and client, physician and patient, social worker and "case." It is possible for us to know people merely as customers, merely as clients, merely as patients, merely as cases applying for relief. In that event, our relations may be described as *abstract.* Such abstract relations may perhaps be best illustrated by our ephemeral contact with the beggar, or by the unyielding attitudes involved in race prejudice. Our attitude is formal. We are considering types rather than specific human beings. The imagery is more hazy, and many, if not most, details are lacking. One phase of human life has been abstracted more or less completely from all the rest. We have established habits of acting toward each type, which make it possible to ignore individual differences.[9]

Now our relations with delinquents are usually of the latter sort. For the most part they do not belong to our group of friends and acquaintances. Hence our attitudes toward them are pretty formal and conventional. We do not bother about seeing them as complete human beings. There is no conscious adjustment of a personal sort between them and us. They are for us a type—or perhaps several types. We ignore their individual characteristics and consider them abstractly with reference to a single aspect of their lives. Thus we rarely consider the possible relations of offenders as husbands, as fathers, as neighbors, as workmen, as voters. They are to us simply "criminals." We have fairly definite habits of acting toward them, which relieve us of the necessity for exerting ourselves as we do in social intercourse with those of our own group.[10] These established habits and conventional attitudes correspond to the fixed penalties of the law.

[9] Perhaps it would be more accurate throughout this discussion to say that we know a man's activity rather than his personality. That would mean that in these abstract relations we respond to only one set of actions in the other person. We respond merely to the purchasing, the requesting of legal advice, the seeking of medical assistance, the appealing for financial aid. But if our relations were concrete, we would respond to every sort of activity in the persons with whom we deal.

[10] Parsons, Elsie Clews: "Fear and Conventionality." New York. 1914.

One aspect of our problem, then, may be put thus: Offenders are neither members of the larger social organization, nor are they completely outside of it. We are not willing to thrust them out entirely, but we have no suitable technique for taking them in. Perhaps our unsuccessful dealings with them are due to this anomalous situation. Can we extend our truly concrete relations so as to include delinquents? Is it physically possible for us to know intimately an indefinite number of people? Are there not more or less definite limitations upon primary groups? It seems that for those beyond the range of personal acquaintance we must fall back upon abstract relations. But what sort of abstractions will enable us to sovle this problem? Are they to be the abstractions of social caste, religion, race, or something of that sort? or can we acquire attitudes which will make all men potential members of our primary group? Specifically, with reference to offenders, what technique will make it possible to develop concrete relations between a delinquent and one who has never broken a law?[11] This does not imply any expectation that everyone shall become intimate with everyone else. But it does anticipate a situation in which there is as much possibility of a "criminal" and a "law-abiding citizen" "getting together," as there is of two "hoboes" sharing their coffee, or of two business men joining the same club.

Another phase of our attitude toward delinquents is important in this connection. They are, to all intents and purposes, *enemies*. We make allowances for our friends, but not for our enemies. We "understand" our friends. We balance one trait, or one activity, against another. Because we know their lives in the large, we are not unduly impressed by single acts or single habits. Thus, if a man belongs to our political party, we excuse him for stuffing the ballot-box; we see no harm in his frequenting houses of ill-fame; we pass lightly over his bribery of a city council on the ground that he is a

[11] This is not an attempt to blink the fact that the relations between prison officials, for example, and prisoners are necessarily somewhat abstract and formal. It is an attempt to state the sort of thing that must happen if the offender is to be delivered from the attitude of an outcast and enemy of the social order. Perhaps the prison officials, perhaps even the parole officer will never be really intimate with the delinquent. But somehow, it seems, there should be a way for the erring one to come into close personal relations with the "ninety and nine." At least, we may fairly raise the question: Is it possible to develop concrete relations between a delinquent and a law-abiding citizen? And if so, how can it be done?

good father; we pardon his occasional drunken sprees because he is a good fellow. But woe to him, if he be of the opposition. In our political enemies, ballot-box graft is an unpardonable crime, sexual vice is an unforgiveable offense, bribery is a felony, drunkenness is a sign of degeneracy. Observation of any such trait in an enemy spurs us to violent denunciation. Of course, this is most obviously true in the case of national enemies. We boil with righteous indignation at the harsh deeds of the foe, and condone the same acts on the part of our compatriots. Pillaging and ravaging Northern France was a horrible crime against humanity on the part of the Germans, but the rape and destruction in Posen was a necessary incident of the war as carried on by the Russians.

This does not mean that the excusing of crimes and the coddling of criminals is desirable. It is simply emphasizing a difference that really exists between our attitude toward comrades and our attitude toward enemies. There is, of course, still another situation in which we do not expel or destroy the offender, but neither do we condone his action. We want to retain him as a member of the group; we recognize that he can render valuable services. But we find it necessary to prevent certain actions on his part and to make him conform more completely to the customs of the group.

To state it in another way—if we object to some trait or action of a member of our own group, we do not forthwith break loose in unchecked fury. On the contrary, we are restrained by other considerations which bind him to us. The real conflict is not *between* him and us; it is between opposing impulses *within* us. The same thing seems to be true with reference to rivalry and competition within the group. It may take place so long as it is of possible value to the group, but it must not be permitted to injure the group in its competition or conflicts with outsiders. Thus, members of a political party or church may debate among themselves, but they must present a united front to opposing parties or rival churches. Meat packers may compete with each other so long as their position against the government is not weakened. Here again there is an inner conflict. Each debater or competitor is checked and restrained in his opposition by considerations of group welfare. All the impulses, including those of hostility, are organized, because of our intimate relations and our comprehensive knowledge of our fellows. This may be described in one aspect as social control, in another as self control.

But when it is the outsider or enemy who meets our disapproval, the disapproval has full sway. The impulse to condemn is not inhibited by other impulses, such as might be involved in consideration for his family, his business, his political party, his church, etc. There is nothing to which we have a common loyalty. We do not feel the need of settling our differences in such manner that we can work together against another and common foe. Consequently we "let ourselves go." We are exhilarated in the feeling of unrestricted activity. There is nothing we may not do to the enemy. Moreover, this intense excitement of turning our energy loose is enormously heightened when we find the other members of our group doing the same thing. We attain an enlarged self-feeling and enthusiasm in this identification of ourselves with the group. The lid is off! self control and social control are removed. We have here all the typical phenomena of the crowd or mob.[12] All this may be said to grow out of the fact that the object of our fury is hardly a person, but a type; scarcely a real human being, but almost an impersonal danger. Lynch law is the best example of unhampered reaction against those who do not "belong."

Now this is very much like our attitude toward offenders. We treat them as the enemies of conventional and respectable society. If there is a quarrel between a rancher and his "hands," and if somebody is hurt or killed, we round up every "blanket stiff" in the county and either lock him in jail or run him down the road. We are not concerned with underlying causes of the disturbance. We simply let ourselves go. The worst that we can do to those beyond the pale of "good society" is regarded as less than they deserve.

On the other hand, our treatment of delinquents seems well calculated to make them feel themselves the enemies of "organized society." They feel every man's hand against them. The idleness of a congregate county jail affords an excellent opportunity for a group spirit to develop among the prisoners, and this group spirit is pretty sure to define itself in opposition to the group life represented by the sheriff, the rancher, the banker, the whole list of those who "belong." Then, of course, the organization of the criminal group excites still more their enemies, and so the thing grows.

[12] Mead, George H.: "The Psychology of Punitive Justice." American Journal of Sociology, 23: 577-602. (March, 1918.)

Ross, E. A.: "Social Psychology." New York. 1908.

Davenport, F. M.: "Primitive Traits in Religious Revivals." New York. 1906.

Our problem of individualization—the discrepancy between "common sense" interpretation of individual differences and actual penal practise—*grows out of the necessary limitations upon really intimate, concrete relations, and the necessity of finding a technique for dealing with people who are outside of our "primary" group.* It is, of course, physically impossible for us to be intimate with everybody. But that need not force us to the opposite extreme of hostility toward all who do not belong to our circle. Abstract relations are to concrete relations as habits are to problem-solving activities. Both are essential to life. The problem is, then, one of establishing a good working balance between the two.

The solution which this statement suggests is this. If we cannot have concrete relations with everybody, we can at least stand in such relationship with someone else who in turn is also intimate with the one farther removed from our immediate circle. It means that we need to recognize in every person the facts of individuality and of common humanity. It compels us to find some correctional system which will put every offender in a group which includes non-offending as well as offending persons (if not within prison walls, at least on parole). It stimulates us to prevent the formation of a criminal group, and at the same time indirectly breaks up the group which is formed over against the delinquents.

Perhaps the question has arisen: Why attempt to take the offender back into our civic order at all? Why not simply let him go? Or, perhaps, reëstablish the old custom of banishment. Would it not be simpler to send all criminals away or to kill them than to undertake the task of making good citizens out of them? What are they to us anwyay?

As a matter of fact, the problem of rehabilitation arises only when the delinquent is one of us; when he is not an enemy from without, but a rebel from within. Then to eliminate him by banishment or death is to weaken the group, perhaps to adopt a policy of social suicide. Abandonment of correctional efforts would mean destruction of social control and annihilation of the group. If group life is to continue at all, it must be by adjustments between members, not by the ejection of those who deviate from the ways of the majority or the powerful. This is why *our problem is fundamentally one of finding a technique for bringing offenders to full participation in our common life.*

The Problem in Terms of Activity

Our original statement of distinctive characteristics as a basis for individualization we found to be inadequate, because it failed to take account of the collective aspect of life. In still another way it was one-sided. It emphasized influences which contribute to delinquency, but ignored the activity of the offender himself.

Suppose, however, we regard that statement as representing only one aspect of the offender. Let us not consider him as a puppet played upon by external powers, a human machine operated by "social forces." But neither let us jump to the opposite extreme and look upon the transgressor as one who, standing at the parting of the ways, deliberately and with perfect freedom of choice, elected to do the forbidden deed. Rather let us behold him as an active agent responding to stimuli in a situation which in one sense makes him and which in an equally valid sense is made by him.

Our earlier statement emphasized predisposition and stimulus—to use terms of the psychologist—but it neglected response. The criminal act, just as any other act, involves all these. They may be regarded as aspects of the act, which cannot really be taken apart into separate elements. Neither offense nor offender can be understood adequately—adequately, i.e., for successful correctional treatment or social protection—unless account be taken of (1) predisposition, by which we mean instinct and habit as well as general bodily conditions, such as fatigue, hunger, etc., (2) stimulus, which may be the smell of whiskey, a threatened blow or the sight of a passing freight train, (3) response, which includes not only the overt act described and forbidden in the penal code, but also repressed impulses and unsuccessful efforts.

Take for example, the case of a vagrant who is a habitual wanderer. He is arrested, let us say, for stealing a ride on a freight train. We might say that the man had deliberately—with full knowledge of the fact that he was violating the law, and with equal possibility of deciding not to be a social parasite—decided to "hop" the freight. We might, on the contrary, seek to find out the causes for his stealing the ride, the origin of his wandering habits. We might say that, given a certain congenital equipment, a certain set of surroundings and consequently established habits, there was no possibility of the man's behaving otherwise than he did. The latter position is apt to be more carefully stated than the former and more helpful in dealing with the

offender. Yet it, too, is inadequate. There is a measure of truth in each view. We are properly very much interested in learning what sort of an organism came into the world when the man was born and what has happened to it since that time. We are properly concerned in possible feeblemindedness, epilepsy, dementia praecox, parental neglect, playmates' ridicule, "Wild West movies," associates urging to drink, necessity of travelling in search of work, habits of intermittent labor, ease of securing food by begging. But more than that, we find it important to emphasize the fact that he has done something. He was not passively played upon by external causes. He acted; he responded to stimuli. That his action may have been unreflective is in no way inconsistent with this view.

If this habitual wanderer is to be changed into a steady workman or a contented inmate of a custodial institution, several things must happen. For one, the habit of securing his meals by back-door begging must be displaced by the habit of earning money and paying for them. Or, if that be impossible, the habits involved in institutional life must be acquired. Neither change is likely to occur as the result of mere repression. Assume, in order to simplify the problem, that the man has an intelligence and a physique not far from what we regard as normal. It may be that confinement in a county jail for six months will produce such a change that the present vagrant will henceforth be a reliable laborer. But the statistics of recidivism indicate that this is very unlikely. Will the chances of rehabilitation or "habilitation" be greater if, instead of idling in jail, he is required to work on a public road? Probably so. But this alone is no guarantee of the desired result. Our observation is that road gangs are more useful for diverting vagrants than for curing them.

Suppose, instead of either of these, the man were placed in a group where, under definite limitations controlled by state officers, he would have the opportunity and the incentive to develop working relations with his associates and his physical environment. Here would be recognition of the man as an active agent, choosing, deciding, adjusting. But here would be also a recognition of the man's hereditary equipment, his habits and the sort of stimuli to which he responds. The factors which had a part in his becoming a habitual wanderer and in the particular offense of stealing a ride would be partially eliminated. New influences would be substituted. But in the midst of these changes the man himself would be acting, adapting

himself to his new surroundings and associates. If he were successful in solving the problems which this involved, he might go on to the solution of more difficult problems, adapting himself to more complex situations, learning to get along with more and different sorts of people. At the beginning there would be a high degree of direct control by the state officers. This would be relinquished in proportion as there was developed that which is in one aspect self control and in another aspect social control.

Individualization means for us, then, something like this: *the assignment of a delinquent to the group and to the set of living conditions in the midst of which he is most apt to succeed in "finding himself."* So far as the management is concerned, this particular group may be subjected to a common set of living conditions. But it will not be on the assumption that all members of the group are alike. The fact of individual differences will be accepted and recognized. These very differences will be the basis for development of the group as a whole and of the separate members. The purpose of the grouping will be partly to limit the numbers, thus producing an artificially small society; and partly to limit the degrees of difference, e.g., between the feebleminded and the mentally normal, the physically sound and those suffering from infectious diseases. But within the limited group and under the more or less controlled conditions of living and working the offender will have the privilege of "working out his own salvation."

The first task of individualization is, then, to study each offender so as to learn, so far as possible, in what sort of a group and under what other circumstances he is likely to make successful adjustments. The second task is to form groups of prisoners likely to develop together, and to establish progressive conditions under which their development is likely to take place.

Perhaps it will be helpful to restate this in terms of *choice.* This is not to reopen the obsolete question of free-will versus determinism.[13]

[13] We wish to guard against entering into the old controversy of freewill versus determinism. We regard each position simply as a different aspect of the same problem; each position supplementing the other; each inadequate and misleading without the other. It is hard to see how a genuinely free will could be moulded by any correctional system. It is equally hard to believe that an offender can be made a good citizen through a sort of moral osteopathy, to which he may passively submit. For a more complete statement see: Cooley, Chas. H.: "Human Nature and the Social Order." New York. 1910. "Social Process." New York. 1918.

It is simply to study our problem from another angle. Choice is determined by a multitude of influences—hereditary, developmental, meterological, economic, social—but still there is choice, unless the act performed is instinctive or reflex. Even if the act be a habitual response to familiar stimuli, there must have been a time when a judgment of some sort was made.

In practically dealing with offenders, some officials have learned empirically the necessity of giving the prisoner opportunities for making decisions. At first in a very limited way, with the conditions carefully controlled, and then in larger and larger measure, decisions may be made which affect the prisoner's personal comfort and relations to other people. Admittedly he is not exercising a "free will," but neither are his decisions made for him. He must and does choose between alternative courses of conduct. He is influenced by privileges which may be granted or withheld, prospects of release, the opinion of fellow prisoners, objective processes such as stock-raising and furniture-making, desire to serve his family, etc. But the important thing is that he does choose and that the *practise in making choices is the process through which he becomes a good citizen or a confirmed criminal.*

Various aspects of the "honor system" present situations in which prisoners must make choices for themselves. Thus we have seen men working on the streets and highways of California without any guards. Convicts in many prisons may earn the privilege of writing letters, seeing visitors, attending "movies" or ball games, or enrolling in prison schools. This principle of choice under controlled conditions has been variously expressed by prison officials. Warden A. J. G. Wells of the Kentucky State Prison put it thus:[14]

> Good prison discipline is such wise and orderly daily procedure as is reasonably calculated to lead each individual prisoner to think the best, to aim the best and act the best, during the period of his confinement and after his release.

Chaplain Orville L. Kiplinger of the Indiana State Prison has a clearer statement.[15]

> Why are men in prison? Because they lacked self-control. There is yet in most prisons entirely too much of the "thou shalt not" to bring men to self-control. In the training of a child it is not enough to make him do certain things that are

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[14] American Prison Association. 1914: 67.

[15] *Ibid.* pp. 246-249.

right. Successful training makes him want to do the things which are right. Under the heavy and inflexible force of prison discipline whose central tenet is "thou shalt not," if a man becomes a good prisoner it is too often the result of fear. . . . Unless he is taught to see the advantages of right living as its own reward the so-called "discipline" is a total failure. . . .

Perhaps the deepest longing of the prisoner is for the right of self-expression. Little opportunity for self-expression is given in most of our prisons. In the average prison no prisoner would dare express his real feelings toward certain of the prison rules. And the objection which most prisoners would voice toward most of the prison rules is that they had no part in making them. Men will submit to almost any set of rules if they have a part in making them.

Perhaps still more to the point are the words of Dr. Kenosha Sessions, Superintendent of the Indiana Industrial School.[16]

From the hour a girl arrives in our institution, she is given to understand that while we will do all we can to help her, after all she is the one who must direct her motives from the inside and find her way out of the institution through her own efforts. We give the girl a task to do the hour she enters, and she is held steadily to that task. No girl comes out of our institution until she has finished a definite course of training in all sorts of domestic work, and has continued in this course because of good conduct.

Not only is the principle of stimulating interest, giving opportunity for making choices, and eliciting the co-operation of the prisoner, utilized more and more in dealing with normal offenders; it is also acquiring widely recognized validity for the treatment of the insane. From diagnosis to discharge the modern hospital staff deals with an insane person not as an object to be moulded by his surroundings and attendants, by medicine and restraint, but as a human being with an active will, capable at least in a few elementary matters of making choices.[17]

This begins with the first conference of physicians for the purpose of diagnosis and is carried clear through to the final conference to consider the question of discharge. In those institutions which we have visited we have found the patient appealed to. He told his own story without interference, no matter how confused it might be. If his ideas were obviously distorted, he was then helped to clear them up, to see things in the relations recognized by "normal" persons. If he was "violent," mechanical restraint was used only as a

[16] American Prison Association. 1916: 72-73.

[17] Hurd et al.: "The Institutional Care of the Insane in the United States and Canada." Baltimore. 1: 217-257.

Beers, C. W.: "A Mind that Found Itself." New York. 1913.

last resort. Even sedative drugs were rarely employed. At first baths and massages were applied, but as soon as possible the patinet was interested in something outside himself. In gardening and basketry, in games and dances, he was put in positions where he must make choices. He could not simply drift, passively receiving therapeutic treatment. Finally, in the "curable" cases there was often a trial absence from the hospital. In other words, there was deliberately employed as a policy, stimulation of the patient so that, beginning perhaps with adjustments to physical objects, and leading up to more or less complex social situations, the patient had to exercise his power of judgment. The conditions under which judgments might be made were definitely limited by the physicians and attendants—limited in accordance with the capacity of the patient for making judgments—but the making of judgments was expected, encouraged and regarded as an essential aspect of the treatment.

Attempted Solution in Terms of Group Life

To summarize—we have established pretty definitely the fact of individual differences. We have seen why the present penal systems do not harmonize with this fact. We have found some practical difficulties in the way of recognizing individual differences in a correctional system. But we have restated our problem in such manner that we have a notion as to where the solution is to be found. We have come to look upon our task as that of finding a technique for bringing offenders to full participation in our common life—not through treatment to which they shall passively submit, but—through their *active participation in a restricted social organization.* We have found evidence that prison and reformatory officials are working their way empirically toward this very idea. The limited extent of their accomplishment, however, has been pointed out by Warden Osborne.[18]

> As a matter of fact, even at the best there is nothing fundamentally new about the Honor system; the differences between it and the old Auburn system are purely superficial. One threatens punishment; the other offers reward; but so far as the ultimate success of the prisoner is concerned, there is not much to choose. Both systems leave altogether out of sight the fact that when the man leaves the shelter of the prison walls there will be no one either to punish or reward. Unless he has learned to do right on his own initiative, there is no security against his return to prison.

[18] Osborne, Thos. M.: "Society and Prisons." New Haven. 1916. p. 216.

The Mutual Welfare League, which Osborne organized, is rich in suggestions. But there is another experiment, less well known perhaps, which has had a much greater measure of success. In reorganizing the Preston School of Industry at Ione, California, Calvin Derrick has probably gone farther than anyone else in consciously developing a system of socialized individualization of offenders. For a description of this effort and accomplishment we shall use an abbreviated statement of Derrick's own account.[19]

. . . Through the study of the Binet work and through other sources of information, we sift out those who can not, or should not, be permitted in a self-governing community. As, for instance, the moral perverts and those afflicted with venereal diseases which are in a dangerous stage, or those having records as sodomists and who are not known to us to have overcome the disease. These are under the study and control of adults. Finally, we have a small number of unbalanced, defiant boys who by reason of their disposition cannot live peaceably or efficiently except under rigid control and restraint. These, too, are excluded from the self-government company. All of these exclusions represent about ten per cent of our population.

Fully realizing that one of the most important, and indeed scientific, sides of the work is that of discipline or the proper methods of correction, we have placed the following safeguards about the question: Every complaint against any boy for anything trivial or serious by either cadets or state officers, passes through the hands of a state officer, my second assistant, a university bred man, who has made a special study of discipline and is fairly well grounded in applied psychology. Complaints dealing with immorality between the boys, or those requiring a pathological study, also those peculiar deviations which could not, or in justice to the boy, should not, be handled by the cadet courts, are put aside for special care and disposal by the state. All complaints against those who are excluded from self-government, as referred to a moment since, are similarly treated. The others all go to the clerk of the court and are disposed of by the cadets themselves. As a further safeguard to the cadets, it is granted that any and all defendants before the court have the right of appeal to the supreme court, over which the superintendent presides. There has been but one appeal in over three years.

I have now shown that from the scientific, humane, pedagogical and industrial standpoints, we have fully guarded the interest and welfare of the boy. Self-government has nothing to do with any of these matters. We all recognize the folly, yes, even crime, of putting such matters into the hands of untrained adults, to say nothing about boys. Still, in the average state institutions these vital matters are in the hands of untrained adults who are little, if any better equipped to handle them than immature boys.

Let us now examine the field left open for the exercise of self-government. It is a rather restricted field to be sure, but from the viewpoint of the boy it is the most

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[19] Preston School of Industry. Biennial Report. 1916.

Derrick, Calvin: "Segregation, Self-Government and State Control." American Prison Association. 1916: 77-94.

important, leaving just about the same activities to his discretion as are left to the discretion of boys at large, namely, the social, including home, playgrounds and their interrelations, all club work, home study and discipline, the military affairs, and certain unskilled lines of manual labor. It is within this field somewhere that boys fail before coming to us; because they were anti-social, or else the people charged with the responsibility of their training fail to understand them, that is: they fail to make the boys see the necessity or at least the desirability of conforming to the set order of things. The first, last and only business of the state school is to enable the boy to return to free society fully understanding his social relations and responsibilities toward others—socially, morally and industrially. In other words, we are asked to *re*-form boys. . . .

Reformation is accomplished through a change of mind, a new viewpoint, and new and wholesome interest in life, and a growing consciousness of one's power to succeed. To successfully direct and train a boy, you must start with his viewpoint. It may be all wrong, and probably is, but it is his view of things, and either you must make your plans coincide with his views or else change his views. In the beginning it is generally easier to do the former. In the next place the boy must be made a concrete factor in a variety of interests and activities where the unavoidable circumstances of his life force him to accept and continue to carry ever-increasing responsibilities, which, however, become his as a result of deliberate choice, never by force. I am not to be understood as saying that you cannot train a boy through force. One may, but such a training is negative. The boy does not develop; he submits and becomes colorless, or rebels and becomes hardened. If he develops, he develops excuses and cunning rather than effort and reason. These boys do not understand our civilization, or at least they do not fit into it. Self-government starting with the boy's view enables him to work out a civil and social order of his own, which he approves and understands. He has just as many opportunities for wrong decisions as for right ones, just as many chances to go wrong as to go right. If he goes wrong he is not combatting the social order of his mental and social superiors in a civilization which he cannot respect, but he is combatting his social and mental peers whom he understands and must respect. His comfort, happiness and progress depend upon his social relations; his social relations depend upon his free choice of conduct in the field of self-government. This, then, is the starting point for the boy: to make him conscious that he is a free moral agent and that his every decision affects his own life and status, and at Preston he makes that start the day he arrives.

Let me now get before you clearly two things: first, that self-government, as interpreted and applied at Preston School, is not an end, but a means to a very definite purpose. In his many tours and lectures, as well as in his two books, Mr. William R. George, the founder of juvenile self-government, so emphasized the courts and the jail system that most people came to feel that self-government among boys was concerned chiefly with their prosecuting one another. This is not the main object of self-government, although it serves a very definite purpose and affords a splendid training in a variety of ways. The second thought is this: that these boys all failed in our civilization. We did not understand them nor they us. The home, school, church and city have each in turn failed to make the boy fit into the approved and established civilization. The boy either could not or would not fit. Does it not

seem to you absurd to suppose that we can place him in an institution which forces a much higher and more nearly perfect social order upon him, and is wholly repressive in its application, and expect him to develop a character and individuality which will allow him to succeed any better upon his return to our social order in which he had for years failed? The sole object of self-government is to furnish a medium in which the boys may develop a civilization of their own with as many degrees and gradations as is necessary to meet their needs and interests, the ideal being to come as close to our standard of civilization as possible.

We started in basements with boys under the strictest state control. They were granted two hours a day of self-government under the eyes of officers. A very brief and faulty constitution was given them. Each company's constitution differed. They could not agree as to a set of rules, each company being actuated by purely selfish motives in securing everything it could for itself at the expense of the other companies. They could not even agree among themselves that civil government is a good thing, but two companies insisted on a military government and were allowed to work this experiment out and compete with the civil government companies. Civil government companies won, and at the end of fourteen months the military companies applied for a constitution and admission to the Republic.

Time will not permit me to show the development of the movement. I wrote and placed in operation the first constitution and administered the first court, training the boys in a crude way. The constitution was intentionally very faulty. A casual reading carried the impression that a great deal of liberty had been granted, but in the court, the judge, and out of the court, the citizens, were very closely restricted when they came to study the document. This was intentional on my part. It was not long before I had a committee visiting me, asking for a more liberal constitution. This was what I was aiming at—the development of their initiative. I prescribed certain limits, territories and restrictions, and told them to do as they liked within this field. They did so. Within eighteen months we had four constitutions, each a great improvement over the former.

A difference of opinion as to the interpretation of the constitution gave rise to political parties; the confusion resulting in courts by reason of each company having different laws and penalties for the same offense gave birth to the House of Congress; congressmen could not agree as to which laws should be abolished and which retained. This resulted in the formation of a commission to draw up a code of civil and penal procedure, and a body of uniform law. The commission developed, after its purpose had been accomplished, into a bar association, after which time, all boys who became applicants for the position of judges, district attorneys, or clerks of court, as well as those who wished to practice law before the courts, were obliged to pass an examination before the bar association.

The code of laws caused the formation of a prison to enforce the mandates of the court. Political graft by the warden showed the necessity of some reform in the matter of appointments to office. A civil service commission and law were enacted by the succeeding congress. Because the government now had prisoners to care for, it had to have work to busy them with; therefore, a commissioner of labor was created and made a member of the president's cabinet, and a certain field of rough, unskilled labor put under the jurisdiction of the government.

A certain politician among the boys, who was running for office, was elected by crooked work in the receiving company, the members of which were not well versed in the politics of the place. The next congress created a Board of Naturalization and made it a part of the department of labor. All boys entering the school after that time had to be naturalized before they could vote, the naturalization calling for the completion of a certain course of study which requires three months to complete.

The civil service law and the recall made the officials much more careful and ambitious in the performance of their duties, but it took practically all of their time. The next congress passed the compensation act, which allowed these officials extra credits for their official duties.

The third congress made application for the control of the military training of the school. It was granted and a secretary of military affairs was added to the president's cabinet, and acts as an aide-de-camp to the military instructor. The congress then passed military inspection laws by the terms of which every member of a company became responsible for every other member's inspection. That is, if one boy in a company lost a certain number of credits for any infraction, like loss of button, dirty rifle, etc., every member in the company suffered the same loss. That is, they had now arrived at a stage where they realized, as a group, that the liberty and safety of all depended upon each inidividual doing his part, while the individual had learned that he could not do as he pleased without injury to everyone else in his group. I considered the passage of these laws a marvelous advance in social and moral responsibility and understanding of the boys.

The government began to feel an interest in the possibilities of the new material arriving at the school, and asked permission to establish night school in the receiving company. This, of course, was granted. Out of this grew the Commission on Social Affairs. The commissioner of social affairs met with the president's cabinet, though not a member thereof. He established clubs, organized orchestras, glee clubs, etc., until there are now twelve such organizations, three orchestras and two quartets. The social commissioner is allowed to draw upon the commissary and kitchen each evening for sufficient cocoa, sugar, cookies, sandwiches and other necessary material to make a real sociable time for the club he is visiting that evening. Needless to say, the social commissioner is the most popular man in the government.

The present administration has placed before me a proposition to permit the government to operate a store for the benefit of the boys and to put into operation a system of coinage. I have agreed to permit it, if *they* can work out a feasible plan that I can with prudence approve.

In the three and a half years I have been at Preston, I have never once interfered in their field of government. If a company becomes lax or indifferent toward its duties and obligations, and its standards of citizenship fall below a certain fixed line, it automatically loses its constitution and goes under state control, thereby giving up a great many of its privileges. This has happened twice. It takes a company from six months to a year to regain its charter. We have little trouble in this respect.

I have never vetoed a law, reversed a judgment, altered or set aside any proclamation of the president, adjourned a congress, or declined to consider any kind of a proposition whatsoever, nor have I permitted any of my officers to do any of these things. . . .

. . . It is, of course, to be expected that the superintendent as well as many other officers frequently suggest things, frequently encourage initiative, and in every way foster its application to new fields of endeavor, but the accomplishment, the advancement, the actual thinking out and getting into operation the desirable thing, is always and under all circumstances, the work, ingenuity, and push of the boys. . . .

Let me now detail just for a moment the life of the new boy. It must be evident that the average boy arriving at the institution comes in a nervous and unsettled state of mind, full of apprehension and dread, and uncertain of his present status or his future opportunities. He is taken in charge by a cadet official and while he is being bathed, shaved, inspected, and clothed, the boy official and the new arrival become acquainted. The boy official starts the arrival off on the right foot, advising him of the advantages and disadvantages of life under the government, or life in the companies under the state. He is made aware that his release depends upon his record and his ability to earn 7,000 credits. He is placed in a receiving company with a certain amount of privileges, and allowed to earn seven credits a day for the first month. Below him is a company with less liberty and five credits a day; above him, companies with much greater liberty and earning up to twenty credits a day. He must remain in the receiving company three months, then he automatically moves up or down. In order to go up, he must have completed a course of study in Preston School citizenship, pass an examination, and be naturalized under the laws of the self-government.

Now, note that he is not obliged to take this course of study, but if he is to advance his own interests, gain more privileges and more credits, live under better conditions, he must exert himself from the very start and take advantage of the first opportunity offered by the state and the self-government. Almost every boy will quickly do this because it becomes his selfish interest to do so. He is able to see quick return from his effort. The spirit, determination and excellence with which he undertakes and completes this first set of examinations greatly influence his school, cottage and trade advancement. If, therefore, he proves unstable, sulky, or displays the qualities of a quitter, he is responsible to himself alone for a smaller number of credits and delay in entering a trade. But if he succeeds, the fourth month he may earn eleven credits a day. However, at any time he fails to maintain either his work or conduct record as thus established by the three months' effort, he may slide back to third class and five credits a day. He is not required by us to do either, but it is greatly to his interest to constantly advance his standards.

Don't you see that the *only* thing we, the system, really require of any boy is a choice, a decision—he must decide something, up or down; he cannot drift, but which it shall be is always "up" to the boy; not even a question of advice from us unless he asks it, in these particular matters. If he chooses the opposite course, he must remain longer; he will not be sure of parole when he earns 7,000 credits; he will not learn a trade; he will not enjoy much of the privileges of Preston; he must live under very strict rule and do the most disagreeable work.

In other words, if we can surround him with the proper conditions, we find that the defective and delinquent boy will respond to precisely the same appeals and selfish interest which keep you and me at work; that is: the love of better living conditions, entertainment, distinction, hope of greater personal rewards, etc. The

self-government supplies every one of these desirable elements for our purpose, because it presents a large number of well graded opportunities, requires constant effort, quickly rewards the effort, appeals to the ambitious, offers a clear and very broad field for initiative, fosters personal distinction, requires a declaration of principles, a high standard of ideals, a reasonable devotion to duty for the good and comfort of others, a responsibility toward the community and a definite interest in the public good.

This is the most successful instance, of which we know, of practical individualization. First there is a social diagnosis, including physical and mental examinations, study of heredity and environment of the offender. On the basis of this diagnosis he is assigned to a group—not a mere collection of delinquents, but—a social organization.[20] He is a vital part of the group, influencing and being influenced by the other members. He is not the passive recipient of treatment, but is actively coöperating with his associates in solving his immediate social problems, and in gradually working himself out into the larger and more complex society in which he had previously failed.

His assignment within the institution is not based on his being like the others in his company, although it is important that differences should not be too great at first. It is recognized that he is a distinct personality. The very fact of his individual characteristics makes possible the process of reformation which has been described. It is necessary for him to learn to get along with other people, to make social adjustments. Life outside institution walls consists in one of its aspects in just this.[21]

Now on such a basis as this, individualization becomes practicable. The fact of individual differences, which is a matter of every-day observation, gave us our cue, but did not provide us with a working

[20] It is a small and more or less externally controlled group, to be sure, but nevertheless, a genuine group. The life together in a cottage, in school, at work, at play, and most of all as a relatively self-governing "state," makes a social organization that means something. Compare this concrete situation with the general statements of:

Cooley, Chas. H.: "Social Organization." New York. 1911.

Ross, Edward A.: "Social Control." New York. 1901.

[21] The way in which these adjustments are made, or better, the way in which the individual participates in and is himself made by the group life is simply stated by:

Cooley, Chas. H.: "Human Nature and the Social Order." New York. 1910.

Thomas, Wm. I.: "Source Book for Social Origins." Chicago. 1909.

Dewey, John, and Tufts, Jas. H.: "Ethics." New York. 1909.

program. But in the social nature of the individual, in group life, we have not only a more adequate theoretical statement, we have also a very definite basis on which to proceed in practise.

Perhaps we may be helped by an analogy. A physician individualizes his patients more or less both in diagnosis and treatment. Dr. Cabot has shown[22] how the same symptoms may prove to be due to widely different combinations of causal factors. So it is probable that no two patients will be just exactly alike. However, they will have points of similarity, and the same diagnosis may be made in many cases. But after the diagnosis has been made and the case has been pronounced, e.g., one of tuberculosis, it is necessary to vary the prognosis and treatment in accordance with numerous factors. The outlook for recovery will depend on age, habits, economic status, etc., of the patient. The treatment likewise must be varied, especially to meet varying social conditions. The willingness and ability of relatives and friends to help intelligently must be considered quite as much as the bodily condition of the sick man himself. If his home does not provide a suitable social situation, the patient may be removed to a sanitarium. There he will have not merely medical facilities and attendance; he will (it is hoped) be in a group whose members are bent on recovery of health. The hours for eating, sleeping and perhaps exercising are organized there in a way that might be impossible in the home. Competition with well persons is removed. So far as possible, a social situation has been created in which the patient can make adjustments and through solving the relatively simple problems can become able to meet difficulties of increasing complexity.

Individualization has at least three aspects: (1) individualization in diagnosis, (2) individualization in prognosis and prescription —estimating the outlook for recovery and planning a course of treatment, (3) individualization in treatment, letting the delinquent "be somebody" in a restricted society.

We may well emphasize again the fact that this does not mean a separate program, separate room, separate care-taker for each offender. *It does not treat the individual as an isolated unit.* On the contrary, *it studies the individual delinquent in his social relations*, because the problem which he presents is after all one of social

[22] Cabot, Richard C.: "Differential Diagnosis." Philadelphia. 1911.

relations. Medical and psychological examinations and field studies are made for the purpose of learning to understand the offender in his social as well as in his individual aspect. In the treatment similarly he is no longer dealt with according to the old "Pennsylvania system." He is placed in a new social group. New social relations are substituted for those which presented the problem of his delinquency. In both the old and the new situation his social relations are distinctive and unique, which is just another way of saying that he is an individual.

In other words, *individualization of offenders is only one aspect of their reformation. The other side of it is socialization.* These are not two distinct entities. They are simply different ways of getting at the same thing. Because man is what he is, we cannot have the one without the other.

CHAPTER VI

A Unified Correctional System

We may summarize the outcome of our studies down to the present in the following four propositions:

1. The county jail system is unutterably bad, but it seems to be giving way in two directions—individualization and centralization.

2. Individual misdemeanants present so many different traits and so many different problems, that no set of fixed penalties can meet their various needs. The things worth emphasizing are their individual differences and their common humanity.

3. In no important way can misdemeanants be distinguished from felons as a group. Hence there seems to be no good reason for maintaining two distinct sets of institutions—state prisons and local jails.

4. These facts seem to point the way very definitely toward individualization through a unified correctional system.

In the last chapter we indicated the sort of individualization that appears both feasible and worth while. The problems of its practical application are:

1. To study each offender in order to learn, so far as possible, in what sort of a group and under what other circumstances he is likely to make successful adjustments, i.e., to get along with other people.

2. To form groups of prisoners likely to develop together, and to establish progressive conditions under which their development is likely to take place.

Fortunately we do not have to proceed altogether in the dark. There are several suggestive precedents to guide us. Perhaps the most important is New York's new clearing-house plan for felons.[1]

[1] Lane, Winthrop D.: "Sing Sing's Swan Song." Survey, 39: 186-7.
Glueck, Bernard: "Types of Delinquent Careers." Mental Hygiene, 1: 171-195.
"The Rebuilding of Sing Sing Prison." Delinquent. Sept., 1917. pp. 3-5.
Jaffray, Julia K. (Editor): "The Prison and the Prisoner." A Symposium. Boston. 1917.
Lewis, Burdette G.: "The Offender." New York. 1917.

The plan of utilizing Sing Sing as a Reception Prison was first promulgated by the New York State Commission on Prison Reform in its preliminary report published in 1914. The Commission recommended that the Sing Sing site should be abandoned as a prison, and that to it all prisoners sentenced in New York State should be sent for medical examination, observation, and for study of their character and aptitude, before being disposed of in pursuance of the sentence of the court.

The proposition passed through a period of discussion to its recognition in the law of 1916 which provided for a new Sing Sing prison and the conversion of old Sing Sing into a scientific receiving station. Psychiatric and medical experts have already taken up their abode at Sing Sing. . . .[2]

Sing Sing, then, is to serve as a receiving station or clearing-house for all persons committed to the state prisons of New York. Here they are to receive physical and mental examinations. They are to be detained while field workers secure their social history. They are to receive such medical, dental and other treatment as may be necessary or practicable while awaiting more final disposition. Dr. Glueck indicates that the receiving station will have (1) administrative functions, (2) medical department, (3) psychiatric clinic, (4) vocational guidance, (5) educational guidance, (6) religious guidance. He anticipates that the offenders will be classified into five large divisions: (1) the normal, who are capable of learning a trade, (2) normal, especially suited for agriculture, (3) insane delinquents, (4) defective delinquents, (5) psychopathic delinquents. These will all go from the courts to the receiving prison, from which they will be distributed, after staying perhaps three to six months, to five institutions: the first group (vide supra) to Clinton and Auburn, the industrial prisons; the second group to Great Meadow, the farm prison; the third and part of the fifth to Dannemora, to be the institution for criminal insane; the fourth and the rest of the fifth to a new institution for defective delinquents.

Already the administration of penal institutions within many states has been centralized in the hands of a single officer, board or commission.[3] But with the very few exceptions noted in the second chapter,

[2] Jaffray. *Op. cit.* p. 30.

[3] See reports of:

Iowa State Board of Control, Wisconsin State Board of Control, Illinois Department of Public Welfare, Rhode Island Board of State Charities and Corrections, New York State Commission of Prisons, California State Board of Prison Directors.

These represent some of the most significant forms of centralization of administration of state penal institutions, either as a distinct correctional system, or in connection with other institutions.

only institutions for felons are included. Indiana has perhaps come nearer than any other state to making the care of misdemeanants a part of the state correctional system. But the significant feature of the New York plan for felons is that something far more important than business management is centralized. The treatment of the offenders is being put on such a basis that genuine individualization will be practicable.

To appreciate the full significance of the New York forward step, it will be well to contrast it with some other policies already adopted or projected. First, let us see how it differs from the use of "expert testimony" in trials; second, from clinical examination as part of the court procedure; third, from clinical examination in the institutions.

We need not base any argument on the possible venal character of some "experts" which brings the fields of medicine, psychiatry and psychology into disrepute. We may rest our case on a more fundamental defect pointed out by Dr. Glueck.[4]

> Many of us are still willing to stake our reputation as physicians on the witness stand when engaged by an obliging prosecuting attorney to assist him in proving the responsibility of the accused for his act. Although we are disposed to grant that there might be some mental abnormality in the case, we are quite certain that his madness had not progressed far enough to exclude a knowledge of the difference between right and wrong. The law, dealing as it does with the problem of crime in a wholly impersonal manner and concerned as it is with the administration of the criminal act rather than with the understanding of the criminal back of the act, is satisfied with such conception of mental disease. In the legal mythology, an offender is either a free rational agent, acting deliberately and in full consciousness of consequences, or he is demonstrably demented.

The difficulties of "expert testimony" are further set forth by Dr. Paul E. Bowers, Medical Superintendent of the Indiana Hospital for Insane Criminals, in presenting the "necessity for medical examination of prisoners at the time of trial."[5]

> The medical examination of prisoners would correct, in a large measure, the evils that attend the employment of medical experts. Much of the criticism that is, unjustly and malignantly, heaped upon the qualified psychiatrist would be done away with and many of the unqualified practitioners, who are posing as mental experts and thereby bringing ill repute upon the medical profession, would be eliminated from court practice. It is the height of medical absurdity to permit a general prac-

[4] Mental Hygiene, 2: 548-549.

[5] American Prison Association. 1916: 114-122.

titioner who is without knowledge and experience in psychiatry to give opinions and statements in courts which are likely to affect the life or liberty of an individual. Our present method of employing expert testimony is productive of but little good, and a great deal of harm. Our present system makes it impossible for the alienist, no matter how well qualified and honest, to give testimony that is entirely satisfactory to his own conscience and to the merits of the case in hand.

The physicians are hired by the plaintiff and the defendant and pitted against one another in a wordy battle for the display of wits by lawyers who are skilled rhetoricians, and who, cunningly and skillfully, by use of dialectics, suppress medical facts dangerous to their own purposes and lay undue stress on non-essentials if they can thereby gain any advantage over their opponents. Very equivocal, hypothetical questions are presented which are often not supported by salient facts, and the doctor is required to answer the unproved statements without the privilege of due and careful consideration. The individual of the hypothetical question and the person on trial often seem to bear only the faintest traces of kinship to one another.

To correct some of the wrongs which I have enumerated, the court should appoint a physician who is qualified by training and experience in the science and practice of psychiatry. This physician should be a part of the personnel of the court; and it should be his duty to sociologically, physically and mentally examine every prisoner at the time of his arrest and trial. A careful, written, detailed report should be made and presented to the court for the instruction of the judge and jurors.

Reasons such as these pointed out by Dr. Glueck and Dr. Bowers are probably responsible for the fact that some courts have as part of their regular personnel physicians, psychologists or psychiatrists. Thus there are clinics in connection with the municipal courts of Chicago, Boston, Philadelphia and doubtless several other cities.[6] But there are several difficulties which the court clinic has to face. Even if it is successful in making a satisfactory medical-psychological-social diagnosis of the accused, the court is limited—if the prisoner be found guilty—to commitment, usually for a more or less definite period, to a single institution, or at most a choice of two or three. In other words, there is a gap between the diagnosis and the treatment. The only chance to follow up the diagnosis and to make specific use of it occurs when the prisoner is put on probation. Then he remains under the jurisdiction of the same court. But when he goes to an institution, which may or may not be adapted to his particular needs, there is great likelihood of the clinical record's burial in some document file.

[6] Chicago. Report of the Psychopathic Laboratory of the Municipal Court of Chicago. 1914-1917.

Boston. Ninth National Probation Association. 46-52.

Philadelphia. National Conference of Social Work. 1918: 132-9.

But even more fundamental—every diagnosis is tentative, subject to revision as treatment proceeds; and it is impossible for the court clinic to foresee with certainty what changes in treatment must be introduced as the rehabilitation goes on. This difficulty might conceivably be met by periodic review of cases by the committing court. This happens in some juvenile courts—e.g., the California Juvenile Court Law requires that court orders of payment for the care of committed children must be renewed every six months. But another effort to deal with the situation has resulted in the establishment of clinics in various institutions.

Examples of institution clinics are to be found in the Chicago House of Correction, Westchester County Penitentiary, and the Massachusetts Reformatory for Women.[7] The trouble here is that the offender has been sent to the institution, usually without possibility of recall, before the clinic gets hold of him. This means inevitably that many prisoners will be found who cannot take advantage of the facilities of the institution, or who interfere with the progress of other inmates. Neither "expert testimony," court clinics nor institution clinics meet the situation with anything like the degree of success which the New York plan promises.

It seems, then, that the clearing-house system devised for New York is the most satisfactory yet considered. But it fails utterly to help the misdemeanants. If we have found correctly that there is no important difference between misdemeanants and felons as a group, the same correctional organization might well deal with all adult offenders. Unification and centralization are being more and more accepted as working principles for dealing with felons. We have found no valid reason for doubting their applicability to misdemeanants as well.

In the pages which follow we shall outline a unified correctional system for California. In order to make our proposition concrete and definite it has seemed necessary to select some particular situation; and because our own personal experience and the data presented in the first chapter have most to do with California conditions, that state has been chosen. However, if the principle is valid for California, it should prove applicable to other states as well.

[7] Chicago. Journal of Criminal Law, 8: 837-843.
Westchester. Mental Hygiene, 2: 595-604.
Massachusetts. Journal of Criminal Law, 5: 704-717.

A Plan Proposed for California

In presenting this plan for California it is important to emphasize two ideas: (1) this plan is by no means regarded as perfect or final; it is offered primarily for the purpose of provoking discussion; (2) although it is California about which we are speaking, we are interested in the applicability of this scheme to any state. With these considerations in mind we shall proceed to outline the possible organization of a unified correctional system and the successive steps which it might take in handling an offender.

As to organization we propose *a single state department* to be known perhaps, as the department of correction. Our precedents for this are the existing state departments, already referred to, which centralize the business management of correctional institutions, together with the clearing-house scheme being developed in New York.

The final authority and responsibility within the department would be vested in an *unpaid, non-partizan board*, appointed by the governor. This board might well be constituted, as is the present California State Board of Charities and Corrections, of six members, of both sexes, never more than three of one political party, representing various geographical, religious, occupational and other social interests. The appointments would be so arranged that not more than two members of the board would go out of office in the same year.

The board would have the duty of determining the general policies, reviewing the work of its employes, appointing the executive officer and passing on his appointments of subordinates. One of its most important tasks would be to decide upon the uses to which institutions should be put, rearranging and reclassifying as experience might dictate. Thus, if the enforcement of the Harrison Drug Act and the National Prohibition Amendment should be so successful as to reduce greatly, if not practically eliminate, the number of inebriates, institutions now devoted to their care could, without legislative enactment, be made to serve other purposes. The existence of such a board with the powers suggested would, we believe, make for flexibility and much more effective work than we have at present.

Under this single department of correction we propose to centralize the administration of the state prisons, local jails, receiving stations, clearing houses, probation and parole for all adult offenders. Naturally an unpaid board could not possibly carry the details of so

extensive an organization personally and would have to depend very much upon its executive officer.

In view of this fact, the question may be raised: why have the unpaid board at all? In advocating this we are expressing a personal preference, recognizing the fact that there is no agreement among "experts." Such unpaid boards have been tried in many states, but so also have paid boards and paid executives appointed directly by the governor. Our own opinion, based on four years' experience and a study of the systems of various states, is that such an unpaid board will attract the services of our highest type of citizens. Thus, California has unquestionably had in its State Board of Charities and Corrections, free of charge, the invaluable counsel, the public spirit, the broad outlook of men and women whose time could not be bought.

The membership of the board has included ministers, physicians, lawyers, business men, university professors and social workers. It has at all times had representatives of the three great faiths, Protestant, Catholic and Jewish. Being thus composed of men and women of various occupations, religious beliefs and political connections, the board has inspired confidence in practically all elements of the population. It seems to be pretty generally felt and accepted as a matter of fact that the Board of Charities and Corrections stands for fair play.

The provision of an unpaid board with a paid executive appears to be the best way of combining democratic control with administration by specialists. The absence of salary or fees for the board members will tend to limit their interference with matters of administration, in addition to making their positions relatively unattractive to party politicians. On the other hand, the existence of the board guarantees a hearing for many interests in the discussion of policies. It is a safeguard against more rapid development than public opinion justifies, for if the executive cannot convince the majority of his board, how can he hope to have the support of the public which they represent?

The *executive officer* would be responsible to the board for the carrying out of its policies. He would appoint the heads of subdepartments or divisions, and they would be accountable to him, subject, however, to confirmation by the board. Among the functions of the executive would be: (1) transmitting decisions of the board to the appropriate division chiefs, (2) holding frequent conferences with

the division chiefs or directors in order to correlate their work and make the unity of the system real, (3) presenting problems of the various divisions and of their interrelations to the board, assembling information concerning matters about which questions might be raised, (4) preparing a budget for the board's consideration. The appointment and tenure of office for the executive as well as for the remainder of the staff would be on some sort of a merit basis. At least qualifying examinations, probationary appointment and prohibition of removal except for cause would be elements of the system.

The department would have *thirteen divisions*, whose chiefs or directors would be appointed by the executive officer, subject to confirmation by the board. They would be: director of the detention houses or jails, director of the receiving stations, director of the northern clearing house, director of the southern clearing house, director of prisons, director of transportation of prisoners, director of probation and parole, director of the bureau of identification, purchasing agent (or liaison officer between the department of correction and the state purchasing department), director of construction, attorney, director of research, chief clerk. The titles of these division chiefs indicate roughly the organization and the extent of work the department would have.

There would be a central office, say, in Sacramento. One of the clearing houses would be located in or near San Francisco, the other in or near Los Angeles. Receiving stations would be located at convenient points, possibly thirteen in number, over the state. In the central office would be the executive, the director of jails, director of transportation, director of receiving stations, director of prisons, director of probation and parole, chief of identification bureau, director of research, purchasing agent, attorney, director of construction and chief clerk.

The *division of jails and houses of detention* would take over the control and administration of all jails now managed by local authorities. The actual ownership would better be vested in the state, but it might be necessary to commence with leasing. The director of this division would appoint all jailers, who would be state officers. As jailers, they would not have, as at present, any connection with the office of sheriff or chief of police. However, in cases where the number of prisoners would be very small the jailer might have some other public duties. He might be a town or county officer as well as a state

officer. But for his management of the jail he should be responsible to the state department directly.

The jails, then, would be used exclusively for the detention of persons temporarily while awaiting or undergoing trial. As soon as judgment should be rendered, the prisoners would be released (if acquitted), turned over to a probation officer, or to an officer of the division of transportation for conveyance to a receiving station. This would mean a totally different type of jail building. Complete separation of every prisoner from every other would probably be wise for the relatively brief time that would elapse between arrest and judgment.

The *division of transportation* would be a distinct innovation. At present persons committed to a California state prison are taken by a deputy sheriff to San Quentin or Folsom, the officer receiving a five dollar per diem in addition to all expenses and his regular salary. It is commonly regarded as a junket trip. In place of this, we propose to have officers specially designated for the duty of transporting prisoners between jails, receiving stations, clearing houses and state prisons. In order that the work of these officers might be correlated and done with the greatest efficiency, they would be organized into a separate division and made subject to a director of transportation. This would have the added advantage of relieving probation and parole officers of the unpleasant task of conducting a prisoner to an institution.

Let us next consider the *division of receiving stations*. In the courts, prisoners would either be released or made wards of the department of correction. If, in the opinion of the court, probationary supervision would be the wisest policy for a given offender, he might be turned over to the nearest probation officer as a representative of the state department. But if the court looked forward to institutional care or expressed no opinion in the matter of treatment, the next step would be for the court to notify the division of transportation through the jailer that a prisoner was awaiting transportation to a receiving station.

In the receiving station the offender would receive a medical and psychological or psychiatric examination. He would then pass through the hands of an identification expert. Social field workers would seek to learn his personal and family history—education, occupation, sicknesses, hereditary defects, etc. These facts would be

added to those supplied by the court to make up a case record. For convenience let us call this process and result a "diagnosis."

In the meantime, the offender might be receiving needed medical, surgical, dental or other treatment. He should be provided with some occupation. If lacking in education, he might be given some instruction.

With the diagnosis made, the offender might possibly be released, although this would doubtless be exceedingly rare. He might be put on probation and turned over to the district chief probation officer associated with the receiving station. Or he might present problems of such difficulty that he would be sent to a clearing house for further diagnosis. No person would be sent to a state prison for confinement except upon the decision of the staff of one of the two clearing houses.

In the receiving station the decision as to the disposition of a case would be made by the superintendent in consultation with the specialists on his staff—physician, psychologist, identification expert, social worker, attorney. In all cases of serious disagreement, as well as those for which imprisonment seemed wise, the prisoner would be sent to a clearing house with his full case history so far as it might be worked out.

For California we would suggest such receiving stations at San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bakersfield, Eureka, Redding, Los Angeles, San Diego, San Bernardino, Santa Barbara. This distribution would seem to meet approximately the distribution of population and geographical divisions of the state.

The *two clearing-houses* would be the only gateways to the state prisons. One of the clearing houses would be in or near San Francisco, the other in or near Los Angeles. Both would be associated with the state university because of their value for research and clinical instruction. The organization of the staff would not differ greatly from that of the receiving stations, except that more capable officers should be secured and larger salaries paid. Also use could be made of university students, and the specialists might give instruction in the university. The identification men would probably not be needed here. But psychologists, psychiatrists, physicians, laboratory assistants, social field workers, attorneys would all have a place in the clearing house.

The primary function of the clearing house would be to make further diagnosis of those prisoners sent to it from the receiving stations. The decision would be rendered by the director in consultation with

the specialists on his staff. When a decision is reached, the offender might possibly be released, although this would be even rarer than in the receiving stations; he might be put on probation, being turned over to one of the district probation officers; or he might be sent to one of the state prisons, the one believed to be best adapted to his needs.

The clearing houses would also serve other functions. They would arrange the transfer of prisoners from one institution to another either as a form of promotion or demotion or as a means of rectifying a mistake. They would also arrange the transfer from institution to parole or vice versa, or from probation to institution. Some of these transfers might well be managed without the prisoner going in person through the clearing house, although in some cases—possibly a good many—such contact and opportunity for further study might prove a considerable advantage.

The *division of state prisons* would not be an innovation at all, for the administration of the state prisons in California is already in the hands of the Board of Prison Directors. Their functions, with the exception of parole, would simply be transferred to this division of the proposed department. But there might well be some important changes in the prisons themselves. What we have in mind here is a number of institutions, smaller than a good many penitentiaries, specialized to deal with different problems. In each institution would be teachers, physicians, guards and possibly some other officers. A warden would be in charge, and over all these institutions—including some for feebleminded, and some for insane prisoners—would be a director of prisons. The number and character of the separate institutions would change in response to changing needs and to increasing knowledge of the whole "criminal group." We shall not go into possible details here. The preceding chapter states in general the sort of policies that we should expect to see carried out.

California already has a state *bureau of identification.* Fundamentally the only change that we would suggest is that this bureau be made a part of the proposed department of correction. All records would be kept in the central office at Sacramento. But most of the original work would be done by identification experts assigned to the several receiving stations. While a large part of their work would be done in their offices, they would be subject to call to any criminal court in the district served by the receiving station to which they

might be attached. They would be subject to the superintendent of the receiving station, but they would also be responsible to the director of the central bureau for carrying out his general instructions as to methods of work and the data to be forwarded to him.

The *division of probation and parole* would be in one phase something quite new, but in another merely the carrying over of what already exists. The parole officers at the present time are under the Board of Prison Directors who control the state prisons. But the probation officers today are county officials. We would suggest a director of the division to appoint district officers, who in turn would appoint local officers to work in different parts of the district. All would be state officers and integral parts of the correctional system. Then uniform methods of work could be developed—although there need not be excessive interference with individual initiative—and responsibility could be definitely fixed.

A person on probation or parole would be a ward of the department of correction, a legal status corresponding to that of the child committed under the juvenile court law. (The child is described in the law and is in fact a "ward of the court"). The probationer would be in the immediate charge of a local officer who would give his ward personal attention and supervision. He would make recommendations to the district chief as to termination of the probation either by release or by return to a receiving station or clearing house. The decision would not rest in the hands of the local officer.

As to termination of probation, the decision might be made in different ways. If the probationer had been turned over to the officer by the court, the decision might be rendered by the district chief probation officer upon request and recommendation either of the committing judge or the local officer. If he had been sent from a receiving station, the decision might be given by the district officer and the superintendent of the receiving station acting in conjunction. In case of disagreement, appeal might be made to the director of the nearest clearing house. If the probationer had come from a clearing house, the decision should be made by the district chief and the director of the clearing house acting together. But in case of disagreement, the opinion of the director of the clearing house would be decisive, except that the district probation and parole officer would have the right of appeal to a committee of three—director of probation and parole, director of the other clearing house and director of

research. Their judgment would be final, except for possible review by the board itself.

As to termination of parole, the decision might be made by the director of the clearing house through which the prisoner had come, but upon objection from the district chief probation and parole officer, a conference should be held between these two and the warden of of the prison of which the man had last been an inmate. If there were still lack of agreement, the matter might be appealed to the same committee of three suggested to deal with matters of probation.

All such decisions would be subject to review by the board itself or by its executive officer. All final releases would involve a restoration of citizenship. As to the relation of this system to the governor's pardoning power, we have not been able to reach any conclusion.

One of the most important divisions of the department would be devoted to *research.* To this division would come all statistical reports from the several offices and institutions, and all case records after the discharge of prisoners. Handling this body of data would itself be an enormous task. But in order to use it for the solution of scientific and practical problems, other and supplementary information would have to be secured from time to time.

The division might publish certain more or less routine statistical reports. But this rather perfunctory duty would fall into the background in favor of research work upon definite problems connected with causes of delinquency, administration of correctional systems, etc.

The staff of the division would include a statistician, statistical clerks, record clerks, field workers, and perhaps from time to time outside specialists. Members of the staff might do teaching in the state university and students might be utilized as research assistants.

Other divisions need not detain us long at this point. The duties of the attorney, chief clerk and director of the construction are more less self-explanatory. It might, however, be added that an attorney would probably be a necessary member of the staff of each receiving station and clearing house. As such he would sustain certain direct relations to the attorney for the department as well as to the superintendent of the receiving station or clearing house to which he might be attached. The purchasing agent would be primarily what the army people call a liaison officer. It would be his task to straighten out difficulties between the offices and institutions of the department of

correction and the purchasing department, which is a distinct unit of the California state government.

It remains to indicate briefly the *place of the police and the courts* in a state which should adopt such a system as we have outlined. The state department of correction might or might not have direct relations with the police. We have assumed that, for the present at least, the police would remain under municipal and county governments.

The question may be raised: why put people who are merely technical offenders through the elaborate processes of the proposed department of correction? The answer is that such procedure would not always be necessary.

We have already provided that the court might place a convicted offender directly on probation. Thus, where it seemed wise to impose a fine for the purpose of restitution, supervision of the restitution might well be left to the probation officer, especially if it were to be through partial payments. The only occasion for sending the convicted man then to a receiving station would be failure to comply with the conditions of probation. Even then a lecture from the judge might accomplish all that would be needed.

There is another problem involved in the violation of more or less technical ordinances such as riding on the widewalk, parking in forbidden places, etc. In so far as they are due to ignorance or occasional carelessness, an arrest may not be necessary at all. In many cases a reprimand from the police would seem sufficient. In other words, it would be possible for the police to assume such an attitude that this problem would become relatively insignificant. If the police were rewarded for preventing offenses and for dealing with certain offenders otherwise than by arrest, the number of persons who really need probation or institutional care would probably show a marked decrease. Another way in which the police could be trained to render great service would be through early recognition of mental defect and aberration. Both of these policies are already in operation in the city of Berkeley,[8] where chief Vollmer has a notable record of accomplishment in the prevention of crime through educating the police.

[8] Journal of Criminal Law, 7: 877-898.

The function of the court would be limited pretty definitely to the determination of fact. It would have practically nothing to do with treatment. If a person had done some forbidden deed and thereby put himself out of harmony with his fellow citizens, the determination of that fact would be the task of the court. With the exception of probation in certain cases—e.g., damage to property through trespass where restitution might appear to be the only necessary "treatment" —that would be its sole task. "Floaters," prison sentences and even fines would be abolished in their present form. Fines might occasionally be imposed in connection with probation. Definite prison sentences would give way to the flexible system of institutional care already outlined. "Floaters" would disappear forever.

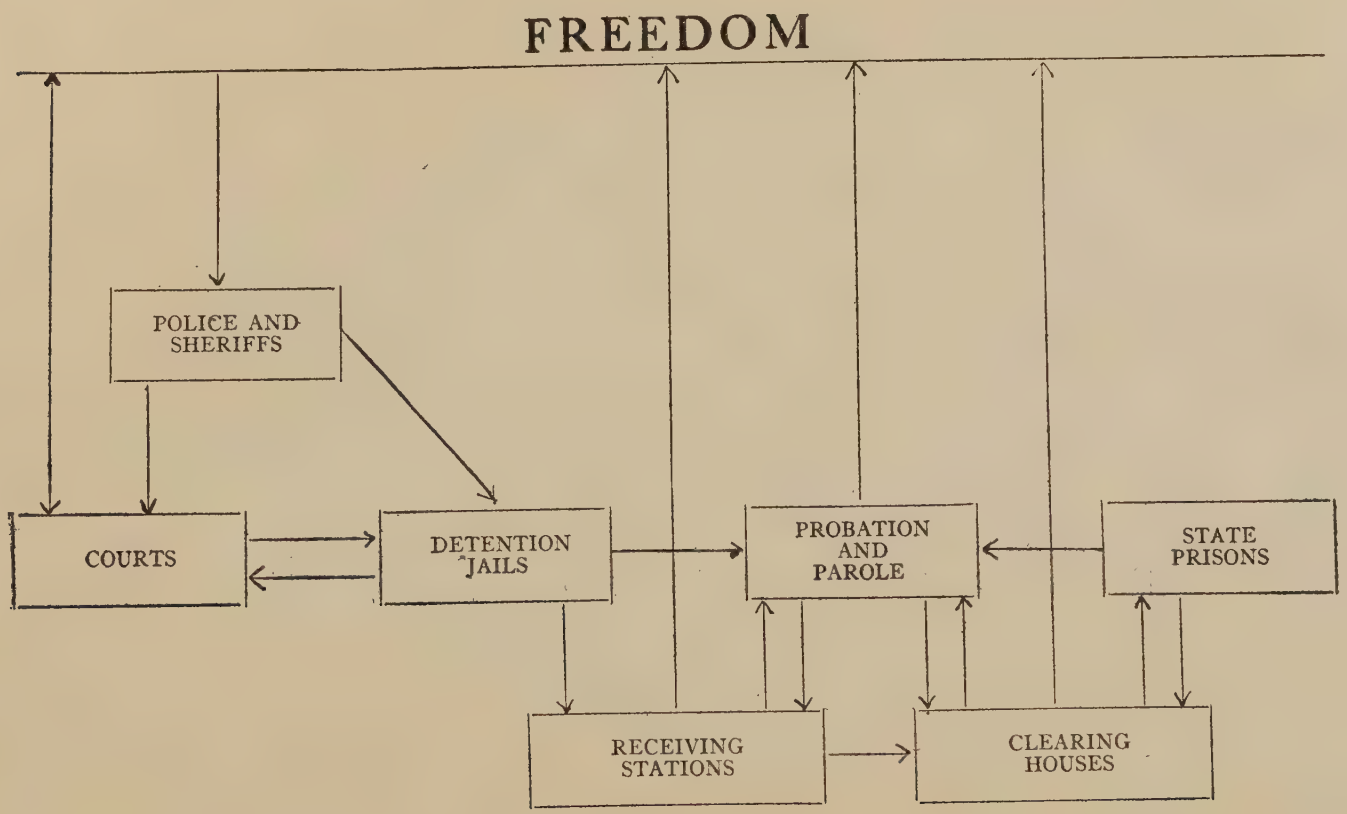
After finding that a person has done something that is forbidden by the penal code, the court would declare him a ward of the state department of correction. In the vast majority of cases that would complete the court's task, except for turning over the prisoner together with the record of his case to the appropriate officer. This would mean genuinely indefinite sentences. Prisoners could be kept in custody for life, if necessary, even though their "crime" might be no more "heinous" than begging. They could, on the other hand, be released as soon as they might prove able to take their part in the normal social life again, even though their crime had been murder. Only by such a system as this does it seem possible to deal with the offender as a man.

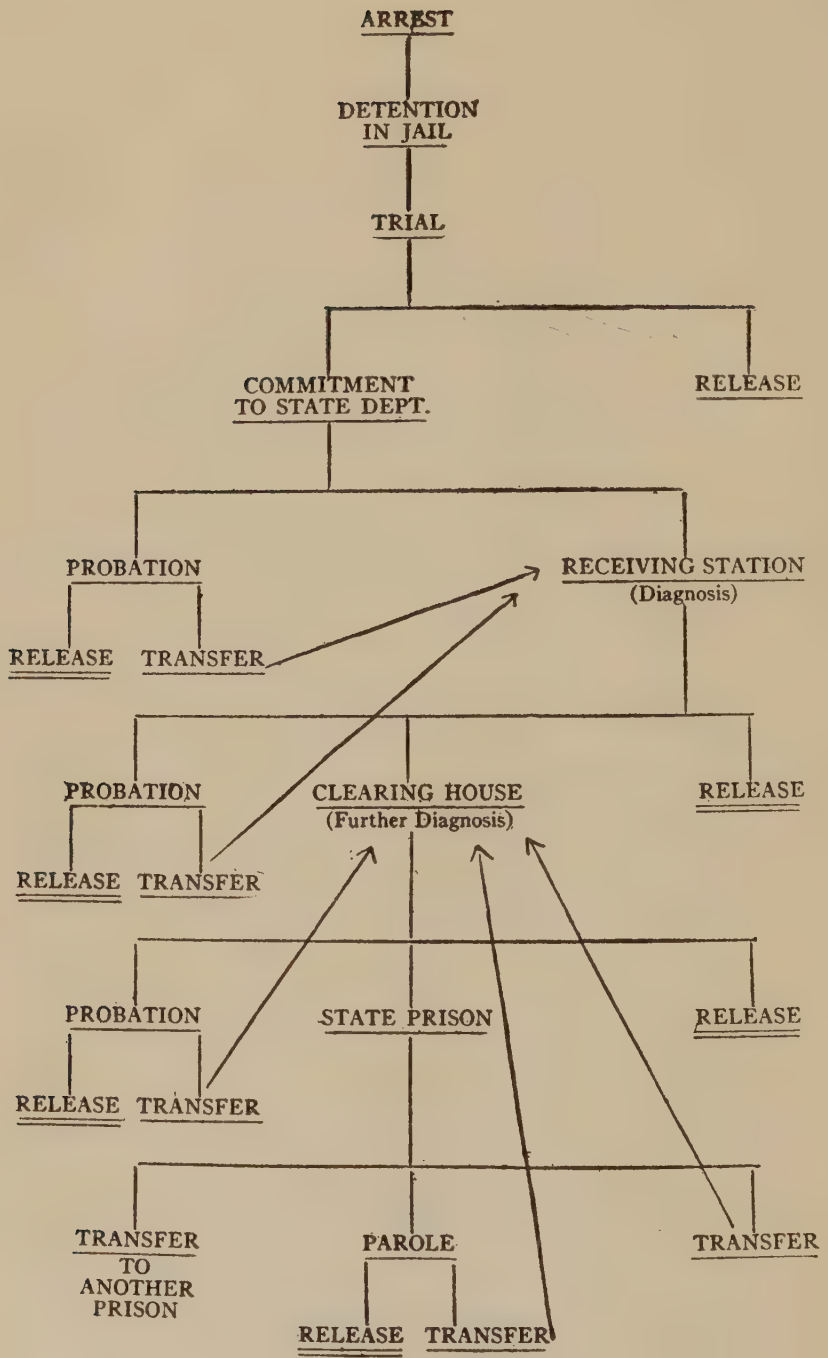
The accompanying charts indicate graphically the organization of the proposed department of correction and the possible stages in dealing with an offender.

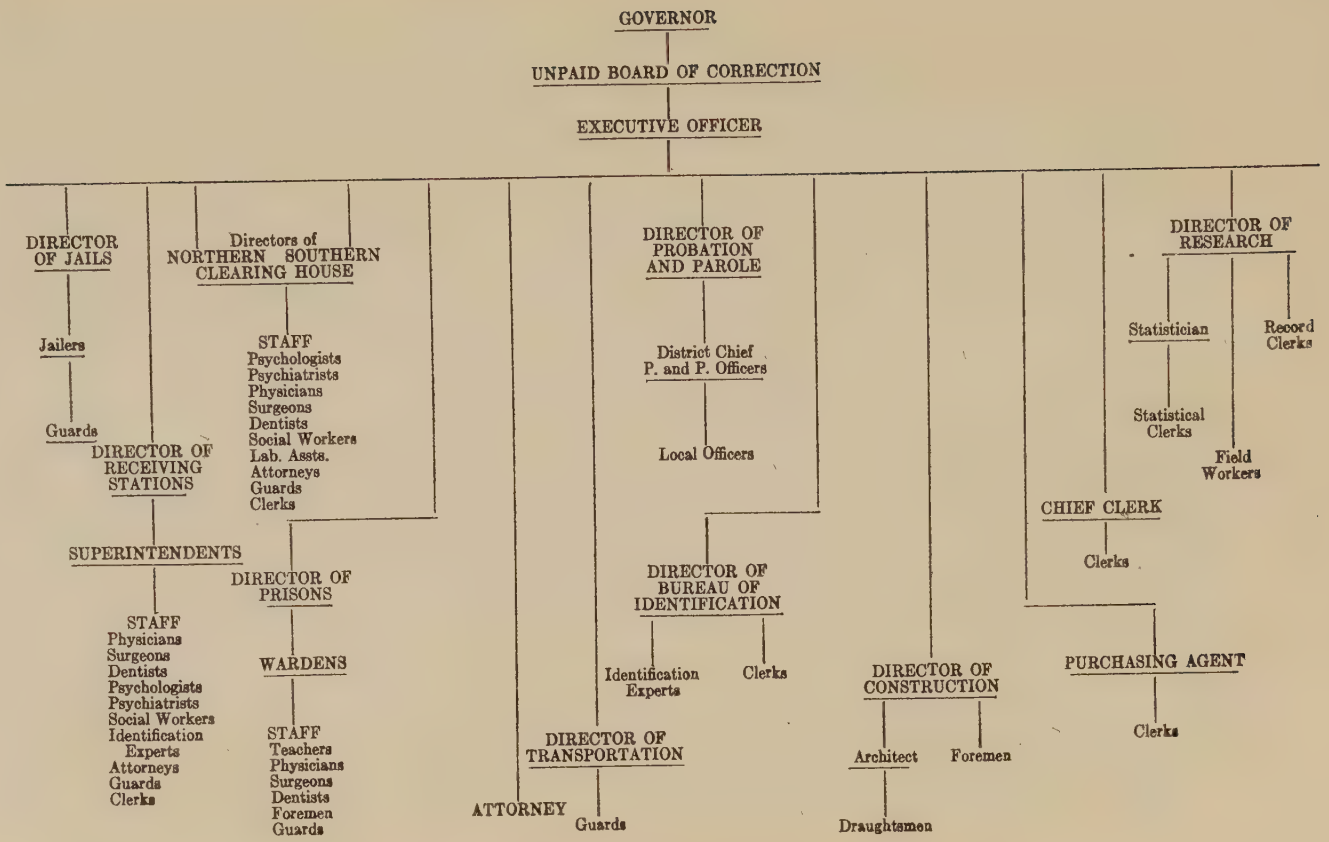
Answers to Possible Objections

We have now presented our thesis, which is fundamentally an argument for individualization through a centralized correctional system. We have set forth in outline form a very concrete plan which should at least serve as a starting point in devising something better. It remains to give some attention to objections that may be raised to our general proposition and its concrete application. Perhaps this can best be done through paying our respects to the "limitations upon individualization" discussed in Parmelee's "Criminology," to which reference has already been made.[9]

[9] Parmelee, Maurice P.: "Criminology." New York. 1918. p. 394 ff.


FREEDOM
POLICE AND SHERIFFS
COURTS
DETENTION JAILS
PROBATION AND PAROLE
STATE PRISONS
RECEIVING STATIONS
CLEARING HOUSES


ARREST
DETENTION IN JAIL
TRIAL
COMMITMENT TO STATE DEPT.
RELEASE
PROBATION
RECEIVING STATION (Diagnosis)
RELEASE
TRANSFER
PROBATION
CLEARING HOUSE (Further Diagnosis)
RELEASE
RELEASE
TRANSFER
PROBATION
STATE PRISON
RELEASE
RELEASE
TRANSFER
TRANSFER TO ANOTHER PRISON
PAROLE
TRANSFER
RELEASE
TRANSFER


GOVERNOR
UNPAID BOARD OF CORRECTION
EXECUTIVE OFFICER
DIRECTOR OF JAILS
Jailers
Guards
DIRECTOR OF RECEIVING STATIONS
SUPERINTENDENTS
STAFF
Physicians
Surgeons
Dentists
Psychologists
Psychiatrists
Social Workers
Identification Experts
Attorneys
Guards
Clerks
Directors of NORTHERN SOUTHERN CLEARING HOUSE
STAFF
Psychologists
Psychiatrists
Physicians
Surgeons
Dentists
Social Workers
Lab. Assts.
Attorneys
Guards
Clerks
DIRECTOR OF PRISONS
WARDENS
STAFF
Teachers
Physicians
Surgeons
Dentists
Foremen
Guards
ATTORNEY
DIRECTOR OF TRANSPORTATION
Guards
DIRECTOR OF PROBATION AND PAROLE
District Chief P. and P. Officers
Local Officers
DIRECTOR OF BUREAU OF IDENTIFICATION
Identification Experts
Clerks
DIRECTOR OF CONSTRUCTION
Architect
Draughtsmen
Foremen
CHIEF CLERK
Clerks
PURCHASING AGENT
Clerks
DIRECTOR OF RESEARCH
Statistician
Statistical Clerks
Record Clerks
Field Workers

(1) Parmelee insists that for financial reasons alone individualization is impracticable except to a very limited degree. In the previous chapter we showed that this might be true of a system which endeavored to provide a distinct type of treatment for each separate offender. But we also showed that not only was such individualization unnecessary; we also showed it to be undesirable, if not, indeed, impossible, because based on a misleading concept—namely, the assumption of the individual as an isolated unit. The sort of individulization that we propose would not necessarily be any more expensive than existing penal systems. Especially might the anticipated expense be cut down by unification, by reducing recidivism, and by preventive work. Moreover, what if the immediate expense should be greater? It would be more than justified, if it promised adequate returns in the future. But the more we study it, the more we are convinced that the socialized individualization of an industrial institution correlated with intelligent probation and parole work would at least prove no more expensive than present-day care of offenders. Admittedly, our answer to Parmelee is little more than the expression of opinion. But so is Parmelee's "objection" an expression of opinion, and an opinion based on a misconception of the individual.

(2) Parmelee's second "limitation" indicates very clearly that his notion of individualization is not at all the same as ours.

> Such a high degree of individualization would, as a rule, have no utility. It is, therefore, necessary to establish a more or less detailed classification based upon the three points of view designated above (origin of the criminality, type of the criminality, intensity of the criminality). The individualizing would then consist in determining the class of each criminal. Such a classification should be developed out of the experience of the courts and of the penal administration, and experience tested and controlled by statistics of recidivism and of the extent of crime.

Just what does his statement assume individualization to be? Would he have criminals sent from the clearing house to the institution tagged "dementia praecox," "accidental murderer," "incorrigible," etc., to be put through corresponding mechanical processes? Whatever his notion may be, it has little in common with what we have outlined. Under our plan, prisoners would be grouped in accordance with the probability of their responding successfully (not necessarily identically) to the same general social and physical environment. They would be sent to take their place as members of groups and to live under conditions which afford the largest probabil-

ity of (a) immediate adaptation, and (b) development of capacity for conduct in more complex and difficult situations. They would not be put into a given institution or ward to be manipulated in the same manner as all others in that place. They would be put there to find a place for themselves in a group life and a physical environment artificially simplified and in a high degree controlled by others, with the hope that solving the problems which they must face here, they will become able to solve more difficult problems, until perhaps they will no longer require the careful tutelage of a correctional system. With such a point of view clearly in mind, it is hard to believe that "such a high degree of individualization would, as a rule, have no utility."

(3) Parmelee's third proposition is that individualization is dangerous to personal rights.

> Furthermore, it would be dangerous to individual rights and personal liberty if unlimited powers of individualization were put into the hands of the courts and penal administration. However efficient these may become, errors will always be possible. Ordinarily these errors will be unintentional. In some cases political reasons may lead judicial and administrative officials to incarcerate indefinitely persons who are objectionable to them. Consequently maximum limits should always be placed upon the powers of these officials, and rights of appeal should always be maintained. However desirable individualization of punishment may be for penological reasons, it would not be worth while to risk endangering fundamental democratic principles for this reason. Excessive enthusiasm for the principle of individualization on the part of reformers is likely to give rise to this danger, especially when they are ignorant of the history of human liberty and personal rights.

Postponing for just a moment the "evolution of human liberty and personal rights," let us face the problem that lies immediately before us. Our belief is that the individual will be in no more danger of arbitrary handling under the proposed scheme than at present. In our study of the California county jails we found that in some communities the peace officers were inclined to arrest or "float" every man who lacked a receipt for room rent or a meal ticket, while in others they ignored, so far as possible, a large number of men who were actually violating laws against begging, disturbing the peace, drunkenness, etc. Of those who were arrested, we found some courts indiscriminately convicting nearly everyone, while other courts dismissed a major portion of the cases. On those convicted of any given offense, some courts uniformly pronounced long jail sentences, while others just as regularly gave short sentences or fines. If

by danger to "personal rights" Parmelee means arbitrary treatment based on personal inclinations of judges, peace officers and prison officials—which is the only tangible meaning we are able to derive from his statement—then surely those "rights" are in great danger under our present system.

Parmelee's argument is based on an assumption of something that does not exist. He assumes that justice is always done under the present system, that personal feelings and political influences are excluded from the courts. If that be true, how can he account for the Mooney case in San Francisco,[10] the trial of the I.W.W.[11] at Sacramento, or a case like the following:

> An instance has recently come to light in New York City in which one John Gill has been in jail since last June for refusing to answer a question before the grand jury. Mr. Gill has recently demanded of the judge to know why he, a poor laboring man, should be in jail for refusing to answer, when Senator-elect Newberry of Michigan, who committed the identical offense, was released in the custody of his counsel.[12]

Now what would be the difference under the plan we propose? The decision as to what shall be done with a man after conviction, at least, will be in the hands of a non-political group of scientifically trained people. The matters of arrest and conviction would not be directly affected at present. But wrongs done a man by conviction are more apt to be discovered and righted through his treatment by a clearing house than through executive clemency or special consideration in a present-day prison. Moreover, the "personal rights" of the rest of us—rights to protection against theft, arson, murder, annoyance by drunkards and beggars—are much more apt to be intelligently guarded under the new system than the old. The "right of appeal" need not be abolished, although it would have to be changed. Admittedly "errors will always be possible," but we cannot bring ourselves to believe or fear that the suggested change will "risk endangering fundamental democratic principles."

[10] Survey, 38: 124, 305, 355, 460. 39: 28, 295, 349, 497, 712. 40: 512.
New Republic, 14: 203.
Sunset, 38: 28.
International Socialist Review, 17: 613, 675.
[11] Nation, Jan. 25, 1919.
[12] Public, 22: 52. (Jan. 18, 1919.)

Returning to the "evolution of human liberty and personal rights," we recall that they had their origin in struggles against monarchical and ecclesiastical tyranny. They assumed doctrines such as those of Hobbes, Locke or Rousseau concerning the individual as a separate and distinct entity. They were set forth in the American Declaration of Independence and guaranteed in the Federal and state constitutions. But what has happened to them? The social order which created and presented these rights has taken many of them away. Within the past two years we have established sumptuary laws, compulsory military service, censorship of the press, governmental operation of railroads, telephone and telegraph, fixing of prices and national prohibition. We have enforced an espionage act which has abolished the free press and free speech. If Parmelee's argument against individualization is sound, then, indeed, all the activities of the United States for the last two years "risk endangering fundamental democratic principles."

Professor Pound has pointed out a legal precedent for individualization in the courts of equity.[13]

> What we have to achieve, then, in modern criminal law is a *system* of individualization, and that this is possible we have the warrant of the experience of courts of equity. In equity we have a system of legal individualization. Every rule has a margin, more or less wide, which admits of discretion in its application to individual causes. As Lord Eldon puts it, the doctrines of equity "ought to be as well settled and made as uniform almost as those of the common law, laying down fixed principles but taking care that they are to be applied according to the circumstances of each case." In equity, too, we have a system of judicial individualization. There is not, as at law, a stereotyped form of judgment which must needs be rendered in every case; but the court has wide powers of adapting the decree to the concrete cause and of doing what will most subserve the ends of justice therein. For the individualization in equity in our system is in its administration rather than in its substance, except as its substance allows this. That rights of property, which are constantly involved in our equity litigation, have not suffered in any wise under such a regime, argues that rights of personal liberty, of which we are at least no less tender, do not require hard and fast formulas administered mechanically in order to receive full protection. We must not overlook the fact that today publicity is the most effective check and balance upon the magistrate. There is much less need of the elaborate tying down to which our fathers subjected him.

(4) Parmelee's next point is that there is danger of discrediting criminal justice in the eyes of the public.

[13] Saleilles, Raymond: "Individualization of Punishment." Introduction by Roscoe Pound. pp. xvii-xviii.

There is also a serious objection to individualization which indicates a further limitation upon the application of this principle. To many persons it appears as if individualization causes great injustice, because it results in an inequality of punishment for equal crimes. Consequently, there is danger that criminal justice will be discredited in the eyes of the public, and measures should be taken to avert this danger.

This "limitation" rests upon a number of erroneous assumptions which need to be removed. First of all, it assumes that there is a common measure of crimes and another measure for punishment, so that we can really have "equality of punishment for equal crimes." What are those measures with which we can perform this magical feat of measuring and balancing crimes and punishments? But, suppose for a moment that we have such tools at our disposal, clearly we must have a new set for each state. In fact, we will have to have a different set for each community, each court, and each judge. There actually are so many different ways of dealing with people who do what superficially is the same thing that it would be hard to show that we are now free from this dreaded "inequality of punishment for equal crimes."

Secondly, it is assumed that the public has confidence in "criminal justice" as now administered. The popular appeal of such books as Miss Field's "Story of Canada Blackie," Lowrie's "My Life Out of Prison," Osborne's "Within Prison Walls," and others indicates that there is not that naïve confidence in our penal system which would be shattered by the proposed changes. Thousands of people read in the Chicago Tribune of April 12, 1919, a long account of a man charged with murder, who was discharged because the police had forced a confession from him. Not only the fact that such things can happen under our present system, but the additional fact that the people know they happen, and that therefore they make good newspaper stuff should suffice to disillusion Parmelee on this point.

However, it is a fact that the man on the street would feel something lacking in the proposed scheme. It is the same sort of thing that the evangelist misses in the liturgical churches, that the stock-gambler misses in "scientific management," that the cowpuncher misses in tilling the soil, that Lady Bountiful misses in social diagnosis, that the fireman misses in concrete buildings. Excitement is lacking. The excitement of the revival meeting, of the rodeo, of the "pit," of the man-hunt and of the hanging—this has no place in the new order.

Our program implies the definite abandonment of punitive justice both in theory and practise. For the negative definition of right in terms of prosecution and punishment it means the substitution of a positive definition in terms of prevention and reformation. Instead of the ephemeral moral enthusiasm centered on the destruction of criminals, it suggests a consistent effort to offset wayward tendencies and to reinstate delinquents in the social order. It calls for a restatement of moral values including the worth of the individual as well as the importance of group solidarity. It demands a new conception of group solidarity with reference to purpose or function, in place of the old conception which had reference merely to opposition to other groups.[14]

(5) Criminals would feel themselves unjustly treated! This is Parmelee's fifth objection to individualization.

> It is probable that criminals sometimes feel that they are being treated unjustly when others who have been guilty of the same crime receive a lighter penalty. This can be obviated in part by the merit system in the penal institutions. A criminal should be made to feel that the severity and duration of his punishment depends largely upon himself, and that others are released with less punishment because they have earned more lenient treatment. But it might also be desirable if, on the occasion of every sentence, the judge would state publicly the reasons for the sentence, thus indicating its justice both to the criminals and to the non-criminal public. In this fashion both the criminals and the public at large might, in the course of time, be educated up to the point of appreciating the justice of individualizing punishment.

Parmelee's own statement indicates that he does not take this "limitation" very seriously. He also intimates that such sense of injustice exists at present. Consequently we might ignore this argument. But as a matter of fact, we have never walked into a jail or penitentiary, or for that matter an almshouse, home for feebleminded or hospital for insane, without finding someone to complain that he was being unjustly detained. Such beliefs, real or pretended, will perhaps always be found, but the correctional system may be measured in part by the degree to which such expressions are not manifest. We do not mean that they should be repressed, but that the incentives to such remarks must be removed before real reformation can occur. However, the removal of the incentives to complain will not be brought about by establishing "fixed penalties." The prisoner who is

[14] Mead, George H.: "The Psychology of Punitive Justice." American Journal of Psychology, 23: 577-602 (March, 1918).

trying to learn a trade, to acquire an elementary education, to make a piece of furniture, to get on well with his fellow prisoners and officers, will be too busy to worry much about the sort of injustice feared by Parmelee.

(6) Finally, our critic falls back upon "the public's desire to punish according to a graduated scale of severity."

> There undoubtedly exists in the public consciousness a desire to punish crimes according to a graduated scale of severity. It has been suggested above that the public may be educated up to the point of accepting individualization without demanding punishment for the crime. However, it is doubtful if the public can ever be induced to accept thorough-going individualization. Furthermore, the public demand for a graduation of penalties according to the gravity of the crimes has some social justification which must be recognized.
>
> I have shown in the preceding chapter that the original sources of punishment are the powerful emotions of fear and of anger. These emotions are prone to lead the individual and society to acts of excess in repressing the objects toward which these emotions are directed, and therefore are in need of regulation and restraint. The principle of individualization should furnish one of the methods of regulating the primitive manifestations of these emotions. But it will always be necessary to permit public vengeance, as manifested through the penal law, to stigmatize the graver crimes effectively by attaching heavier penalties to them. Thus will these crimes be made to appear more odious even to those who have no thought of committing them, and the standard of public morality can thereby be raised. In this fashion the public can display its displeasure against dangerous anti-social conduct as personified by the criminals who commit these acts.
>
> It is evident, therefore, that the principle of individualization must be adjusted to the need for indicating the relative gravity of crimes.

We have shown earlier that the system of fixed penalties, graded according to the assumed gravity of the offense arose as a reaction against the arbitrary procedure of royal and ecclesiastical courts in Europe. It was believed that this system would correct the ancient evils, and its relative success has caused the sanctity of tradition to gather around it. But that is no reason for believing that this will persist forever. The very fact that the public, which once accepted the arbitrariness of feudal, royal or ecclesiastical courts as a matter of fact and looked upon these hoary institutions with awe, came to oppose them and accepted new dogmas and traditions which permeate the present system—this fact is sufficient reason for believing that this too will be cast aside when its shortcomings are fully appreciated and faith has been attached to something new. Public opinion may change slowly, but that it does change is a fact so obvious that

we hardly see how Parmelee's skepticism can be regarded as an argument.

He has merely set for us one part of our problem, viz., how can we direct public attention to faults of the present system and to possible remedies? Or, to state it differently, there is more or less vague popular dissatisfaction with criminal procedure. We who are students of social phenomena have tried to make scientific statements of the problem. We have hit upon an hypothesis. If the public finds that our analysis corresponds with general experience, it may be sufficiently interested in our hypothesis to test it through legislation. If, in the trial, the proposal is found to "work," it will probably be retained as a part of the correctional system, and—who can tell—it may in turn become the bearer of venerable and hoary traditions which will impede further progress.

In advocating this radical change in our correctional systems it is fully recognized that legislatures will not pass the necessary laws all at once, and that even if they would, there would still be the difficulty that public opinion is so far from understanding the principle of individualization that it would not support the new order. It is, after all, a good thing that the moulding of public opinion and the reorganization of our institutions must go hand in hand.

Our proposal of individualization through a unified correctional system is not at all imagined to be a panacea. With it must go important developments along other lines, such as: (a) preventive legislation, e.g., measures designed to minimize unemployment, to protect children, to segregate the feebleminded, (b) periodic revision of the penal codes so as to maintain relative uniformity between the formal law and the mores, eliminating "freak legislation" and "dead letters," (c) police trained and rewarded for avoiding unnecessary arrests, as well as better equipped to catch really dangerous offenders, (d) simplification of court procedure, (e) making the care of delinquents a profession or a group of professions with special training and assurance of a career.

Conclusion

It must be clear that we have placed the treatment of delinquents on a totally different basis from that of punitive justice. However, we have not tried to set up one absolute standard or ideal in place of another. In urging a new program we have simply proposed it as an

hypothesis, a suggested solution of a group of problems which have a very real existence.

Probably there is no one who would not be glad if crime could be prevented. Hence we may fairly state the problem: How can we prevent crime? How can we keep delinquents from repeating their offenses, and how can we prevent the making of future offenders? Probably there is no one who would not be glad if offenders could be made into good citizens. Hence we may state the second problem: How can we enable those who have broken our laws to live peaceably with the rest of us? How can we build up in delinquents that social-self-control which is the essence of good citizenship?

With these problems before us we have assembled evidence bearing on a number of hypotheses. We have not speculated in our closet about the nature of crime and criminals. We have gone forth to draw as widely as we could upon human experience. We have collected data for the purpose of testing various proposals. We have concluded with one which, in the present state of our knowledge, seems most likely to advance the solution of our problems.

The hypothesis which we have offered will doubtless strike many people as lacking in something. It does lack something—something which we can now very well do without. Let us illustrate by an analogy.

Many social groups—perhaps all—have come into existence through conflict. It was opposition to a common foe that brought their members together. It was in terms of hostility to some enemy that the group took form and was defined in the minds of its members. Thus the Christian church arose in opposition to the many religions of the Roman Empire. The Protestant movement was a conflict with the Church of Rome. The various protestant sects have organized and perpetuated themselves by contrast and opposition, more or less modified, to other sects. Now so long as the sense of hostility is alive, there is enthusiasm for the sect. But so long as this is true, the organization emphasizes its negative aspect. Its positive function is thrust into the background. Its successful competition with other groups stands out vividly, while there is but faint recognition of the constructive work which may be undertaken through the co-operative effort of its members.

So it is in the nation. The United States was formed in a conflict with Great Britain. The war against a common enemy brought

together the thirteen separate and none too friendly colonies. All through its history the nation has typified to most of its citizens organized defense against foreign aggression. We have defined it negatively in terms of its power to prevent injury from without. We have thought relatively little of its power to do work within. Hostility rather than function has permeated our patriotism. But after the shadow of this last war has passed, it seems likely that blatant chauvinism will give way more and more to constructive patriotism. The Pharisee who finds satisfaction in cheering the flag and military parades, but who sells milk at enormous profits to the poor, will miss something in the new situation. The man who is eager to die for his country, but who has not learned to live for it, will not feel at home in the new order of things.

So it is with the institution of private property. Our property is apt to be that *from* which we exclude other people rather more than it is that *with* which we accomplish results. It is because of this negative conception of property that we react with such spirit to the cry of "stop thief." We resent any infringement upon the "majesty of the law" because it protects us in our exclusive possession of something. But if it be possible for the positive aspect of property to overshadow the negative, we will deal with it as a means to an end rather than an end in itself. We will be less interested in "no trespassing" and more concerned with "scientific management." Some Socialists and some Christians have already spoken of property as held in trust for the service of mankind. But this attitude involves little of the thrill that goes with stock gambling and cutthroat competition.

Now to return from our analogies to the treatment of offenders—do we not have here about the same contrasts? Does not respectable society define itself in terms of hostility to the delinquent rather than in terms of social service? Does not patriotism consist more in maligning things foreign than in helping our own fallen brothers? Is not property a source of pride and power more than a means of enriching human life? The element of hostility in our conventional attitudes is much more exciting, far more exhilirating than the element of constructive purpose. Social diagnosis and the quiet, unobtrusive processes of reformation do not thrill us nearly so much as the man-hunt and the murder trial. But is it not conceivable that we may learn to get along without these "emotional sprees," and devote ourselves earnestly to the serious business of life? In giving up retri-

butive justice, as in giving up chauvinism, revival meetings and predatory wealth, we will miss something. For a time we may feel lost without the thrill that comes from the hanging, the regimental review, the heresy-hunt, the stock exchange. But in this transition from the negative to the positive values of life may we not find our way to something finer and richer?

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